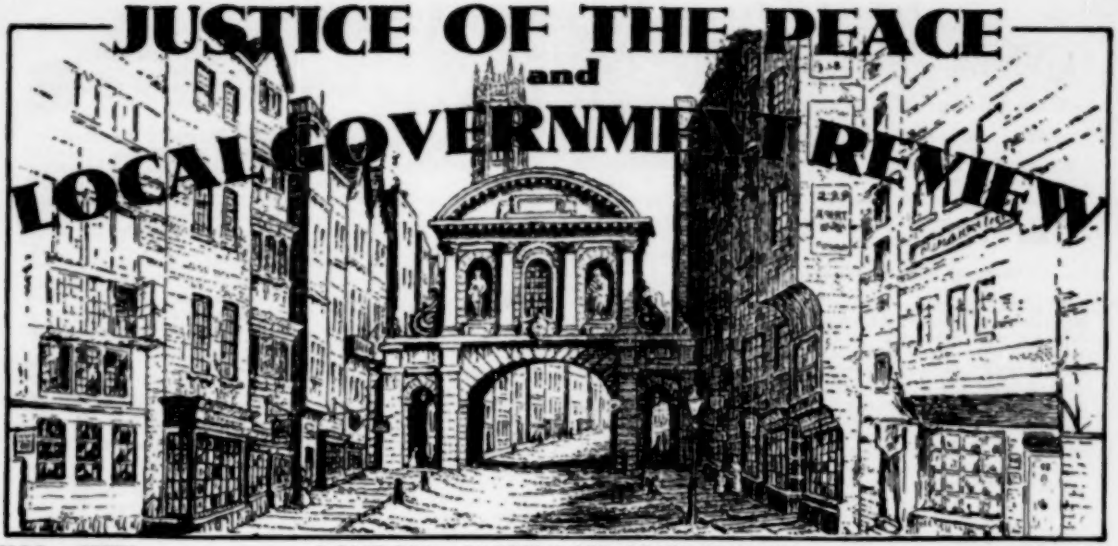

VOL. CXIV. LONDON: SATURDAY, MAY 27, 1950. No. 21

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

METROPOLITAN BOROUGH OF BATTERSEA

Temporary Assistant Solicitor

APPLICATIONS are invited for the above appointment of about one year's duration from Solicitors with more than two year's legal experience from date of admission. National Joint Council Conditions of Service. Salary in accordance with A.P.T. Grade VII (£635 plus London Weighting appropriate to age).

Experience in County Court and Magistrates' Court work essential. Local Government experience desirable. Applications with names of three referees to reach the undersigned not later than June 9.

R. G. BERRY,
Town Clerk

Town Hall,
Battersea, S.W.11.

Senior Legal Assistant, Inland Revenue

The Civil Service Commissioners invite applications for a pensionable post of Senior Legal Assistant in the Inland Revenue. The work will primarily be that of advising upon the law and practice in Rating and Valuation matters and the representation of the Valuation Officer at Rating Valuation appeals.

Candidates must be at least 33 years of age on May 1, 1950 and must be barristers or admitted solicitors in England. They must have had wide experience in rating and valuation matters outside London.

Salary scale for men £1,000 × £30—£1,090 × £35—£1,320; salary scales for women somewhat lower. Higher posts in the Office of the Solicitor, Inland Revenue, are normally filled from Senior Legal Assistant Grade.

Full particulars and application forms from Secretary, Civil Service Commission, Burlington Gardens, London, W.1., quoting No. 3,099; completed application forms must reach him by June 15, 1950.

GLOUCESTERSHIRE (COMBINED AREAS) PROBATION COMMITTEE

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving officers. The successful candidate will be assigned to the Gloucester City area.

The appointment will be subject to the Probation Rules, 1949, and the salary in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination.

Applications, stating date of birth, present position, previous employments, qualifications and experience, together with copies of two recent testimonials must reach me not later than 14 days after the publication of this advertisement.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

ESSEX PROBATION AREA

Appointment of Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer.

Applicants must not be less than 23, nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applicants, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than fourteen days after the appearance of this advertisement.

R. E. NEGUS,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
May 17, 1950.

METROPOLITAN BOROUGH OF LEWISHAM

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of Law Clerk in the Town Clerk's Department (salary scale A.P.T. Division Grades III-IV, £450 × £15—£525 per annum plus London "weighting" varying between £10-£30 per annum according to age). The commencing salary within this scale will be fixed in accordance with the experience and qualifications of the candidate appointed.

The person appointed will be engaged mainly on conveyancing and it is essential that candidates should possess an up-to-date knowledge of this work and of the practice and procedure in relation to the compulsory acquisition of land by local authorities.

The appointment will be subject to the rules and regulations from time to time in force relating to officers, to the National Scheme of Conditions of Service, to the provisions of the Local Government Superannuation Act, 1937, to termination by one month's notice on either side, and to the successful candidate passing satisfactorily a medical examination by the Council's Medical Officer of Health.

Forms of application may be obtained from me and should be returned accompanied by copies of not more than three testimonials addressed to me in an envelope endorsed "Law Clerk" so as to be received not later than Saturday, June 10, 1950.

Canvassing, either directly or indirectly, will be a disqualification.

ALAN MILNER SMITH,
Town Clerk.

Lewisham Town Hall,
Catford, S.E.6.
May 17, 1950.

CITY OF BRADFORD

Appointment of Chief Assistant Clerk to the Justices

APPLICATIONS are invited for the above-mentioned full-time appointment from only those applicants who have a sound knowledge and considerable experience of the work of a Justices' Clerk's office, capable of performing all duties, without supervision, including the taking of courts and acting entirely in the absence of the Justices' Clerk or his deputy. The prospects of promotion are good by reason of the fact that the Deputy Clerk to the Justices is due to retire in the near future. In such an event the Chief Assistant Clerk might, if suitable, be appointed Deputy Clerk to the Justices.

The salary payable will be in accordance with A.P.T. Grade VIII (£685—£760).

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications marked "Chief Assistant," stating age, present and past appointments with full particulars of experience, together with copies of two recent testimonials, must be received by me not later than June 30, 1950.

FRANK OWENS,
Clerk to the Justices.

City Magistrates' Clerk's Office,
Town Hall,
Bradford.

THE LANCASHIRE NO. 13 COMBINED PROBATION AREA

Female Probation Officer

APPLICATIONS are invited for the above whole-time appointment. The area comprises the County Borough of Southport and the Petty Sessional Divisions of Ormskirk and Southport. The appointment will be subject to the Probation Rules, 1949. The successful candidate will be required to pass a medical examination.

Applications stating age, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than June 10, 1950.

B. J. HARTWELL,
Clerk of the Combined Area Committee.

The Law Courts,
Southport, Lancs.

SITUATION VACANT

CLERK wanted by Solicitors in country town in West. Man or woman with general experience especially probate and knowledge of accounts. Able to work without much supervision. Box No. B.14, Office of this paper.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce,** Process serving, Observations, **Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over 150 Agents in various parts of the country.**—1 Mayo Road, Bradford. Tel.: Bradford **26823** day or night. Telegrams: "Evidence" Bradford.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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LONDON : SATURDAY, MAY 27, 1950

Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General] [Post Office as a Newspaper]

Price 1s. 8d.

NOTES of the WEEK

Notification of the Death of Justices

When the statutory instrument bringing certain provisions of the Justices of the Peace Act, 1949, into force on June 1 was circulated to clerks to the justices there accompanied it a Home Office circular, No. 72/1950, calling attention to certain of the provisions, and also a letter to the clerk to the justices, signed by the Secretary of Commissions in the Lord Chancellor's office, which is as follows :

" I am directed by the Lord Chancellor to request you to inform this office immediately of the death of any justice of the peace for your Petty Sessional Division. This information should be addressed to the Secretary of Commissions, House of Lords, S.W.1."

Dangerous Drugs

S.I. 1950 No. 527, made on March 31, 1950, which came into operation on May 1, 1950, sets out in its schedule eight drugs and preparations which will, as from the latter date, come within the provisions of the Dangerous Drugs Acts and the regulations made thereunder. One other drug, Amidone, is also included in the schedule. This was included in a similar order in 1947 under the form in which it was then known. It has now been removed from that order and included, under the forms in which it is now known, in this new order, which is called the Dangerous Drugs Act (Application) Order, 1950.

False Pretences—Form of the Charge

In *R.* v. *Johnstone* [1950] 1 All E.R. 830, the Court of Criminal Appeal gave a ruling that it is no longer necessary, in an indictment for false pretences, to state to whom the pretences are made. In support of the contrary view there had been cited a passage in *Archbold's Criminal Pleading*, 32nd edn., at p. 687, as follows : " the indictment must state to whom the pretences are made and from whom the goods, etc., were obtained," and *R.* v. *Sowerby* (1894) 2 Q.B. 173 was quoted as the authority for that proposition. The Lord Chief Justice in his judgment said that as the Indictments Act, 1915, sch. I, appendix, form 12, now makes provision for the form of a count for false pretences the above statement in *Archbold's* work is no longer accurate.

Justices of the Peace Act, 1949

The first statutory instrument bringing part of this Act into force is the Justices of the Peace Act, 1949 (Date of Commencement) Order, 1950, which is S.I. 1950 No. 517, dated March 31, 1950. The following sections are to come into force on June 1, 1950 : s. 1 (residence qualification of justices), s. 2 (the mayor as a justice), s. 3 (disqualification of justices who are members of local authorities), s. 4 (supplemental list), s. 5 (saving for acts and appointments), s. 6 (amendment of Fisheries Acts), s. 7 (restriction on right to practise as a solicitor), s. 9 (application of Part I to Scotland), s. 11, subss. (2) to (8) (justices and courts in London), s. 14 (age of bench in juvenile courts), s. 20 (qualification of justices' clerk), s. 29, subss. (1) to (5) and (8) to (12) (appointments of stipendiary magistrates outside London), ss. 30 to 35, inclusive (other matters concerning stipendiary magistrates), s. 37 (incorporation of probation committees), s. 39 (transfer to Lord Chancellor of some functions of Secretary of State), s. 40 (appointment of interim clerk of the peace in Scotland), s. 41 (authentication of billiard and music and dancing licences), s. 43 (expenses and payments into exchequer), s. 44 (interpretation), s. 46, with a minor exception (citation repeal and extent), and first schedule (justices exempt from residence qualification). Parts of the sixth and seventh schedules are also brought into force on that date.

Section 13 (size and chairmanship of bench) is to come into force on January 1, 1951, together with so much of the seventh schedule, Part III, as relates to the Local Government Act, 1933.

The third schedule to the statutory instrument sets out certain transitional provisions, one of which is to enable the City of London courts, after June 1, to continue and to conclude the hearing of juvenile court and domestic proceeding cases which they have begun before that date.

Corrective Training

It is reported in *The Times* of May 4, 1950, that in the Court of Criminal Appeal, in giving judgment dismissing an appeal against a sentence of corrective training, Lord Goddard, C.J., made certain observations about this form of sentence. He said that it had been difficult for judges to ascertain exactly what was happening to prisoners sentenced to corrective training and there had been a fear that owing to lack of suitable accommodation such a sentence was in no way different, in effect, from a sentence of imprisonment. Lord Goddard said that the judges had recently had the advantage of meeting the Prison Commissioners and had ascertained that arrangements are in force by which corrective training is given under conditions different from those which prevail under ordinary sentences of imprisonment. A sentence of corrective training is served, of course, in a prison and the usual one-third remission is given unless a prisoner grossly misconducts himself, but the sentence has the great advantage that on release the prisoner comes under the charge of the After-care Association whose duty it is to try to find him work and to keep him under observation generally.

At present two wings at Wormwood Scrubs, two wings at Liverpool, the whole of Chelmsford and one wing at Durham prison are set aside for corrective training. During June there would also be an establishment for this purpose at Nottingham.

Suggested Remedies for Juvenile Crime

The Archbishop of York, in the York Diocesan Leaflet published on May 1, 1950, deals, amongst other matters, with the problem of the prevention of offences by juveniles. He quotes figures showing a high proportion of such offenders amongst those guilty of crimes of violence and crimes against property, and notes, as has often been done before, that the chief cause of juvenile delinquency is to be found in the break-up of home life and in the failure of parents to exercise authority over their children. He points out also the danger of parents being encouraged to feel that the State, with its various welfare and educational services, has taken from them responsibility for their children. We feel that this is a very real danger and that the welfare state has to be extremely careful that it does not undermine the foundations on which a healthy and self reliant community must be based by encouraging people to think that they have only rights with no responsibilities either for themselves or for their dependants. Doctor Garbett summarizes the remedies for juvenile delinquency as follows:—"Children must be taught plainly in schools the difference between right and wrong, that parents must be compelled to attend juvenile courts when their children are brought before the courts and must be made responsible for the payment of any fine or compensation (these last two suggested remedies are already quite largely applied), that the working of juvenile courts should be investigated by a competent committee, that every effort should be made to provide more houses, especially for the lower paid people, and that more playing fields and clubs for juvenile recreation are urgently needed."

It will be seen that there is here no novel suggestion, but it is important to emphasize that there is no short-cut to success in this matter and that the basic causes must be sought and remedies applied.

Earlier in his article, Dr. Garbett draws attention to the need for a religious revival, of which he sees some faint signs, and criticizes the unwise use of probation by some juvenile courts. He thinks that in these courts positive harm is done to children when sloppy sentimentality from the bench is substituted for firmness and understanding.

Implications of Bad Character

In the case of *R.* v. *van Pelz* [1943] 1 All E.R. 36, the court of Criminal Appeal laid down the general limits in which a police officer should confine himself when giving evidence about a prisoner who has been convicted but on whom sentence has not been passed. It was there pointed out that the officer should not make allegations which were incapable of proof and which he had reason to think would be denied by the prisoner, but that on the other hand it was his duty to see that anything known in the prisoner's favour was brought to the notice of the court. In the peculiar circumstances of a case heard recently before a metropolitan magistrate it was suggested that these two requirements could sometimes clash. In this case a number of defendants were charged with being in possession of dangerous drugs; several, but not all of them, were legally represented; all defendants agreed that their separate cases should be heard together, and either pleaded or were found guilty. The officer in the case, in the course of informing the court of the previous records of the defendants, started to say that the defendants A, B, C . . . were not suspected by the police of trafficking in the drugs. Before he could finish the list of those whom he did not suspect of this, counsel for some of the remaining prisoners objected to this information being given to the court on the ground that this was contrary to the ruling in *R.* v. *van Pelz* (*supra*) since by so doing the implication was being made that the defendants X, Y, Z were suspected of trafficking. This implication would be denied by the defendants, and could not be proved by the police. The solicitor for defendant A submitted that although unfortunate consequences for other defendants might flow from such evidence being admitted his client was entitled to have the fact that he was not suspected of trafficking being stated in his favour. The magistrate said in the circumstances he would not pay any attention to the observations which had been made by the police but would assume—unless the police could prove the contrary—that none of the defendants were traffickers.

Perhaps more than anything this case illustrates the difficulties which can arise, often from the most unexpected source, when separate and distinct cases are tried together. This procedure may be welcomed by all parties but not infrequently it is not in the best interests of justice.

Attendance Centres Anticipated

Our note at p. 219 *ante* under this heading has evidently aroused interest and discussion. It appears that many people, including some who are attracted by the idea of a requirement of a probation order which involves the principle behind attendance centres, are dubious about its legality. They feel that it is an indirect means of inflicting punishment and that therefore it offends against the spirit, and probably the law, of probation. Against this, others are prepared to argue that so long as no force or compulsion is used to enforce detention such a requirement can be justified, especially in the case of those over fourteen years of age, whose willingness to comply with the requirement must have been obtained.

It may be that the matter will be tested some day by an appeal to the High Court. In the absence of authority on the point, doubtless many clerks to justices will advise that it is safer to abstain from inserting such requirements in a probation order.

We do not pretend to foretell what would be the decision of the judges upon this question. All we wish to do is to let justices and their clerks know that the practice, though considered legal by some, is challenged by others, so that any clerk giving advice, and any justices receiving that advice, will act after careful consideration.

If only the attendance centres could be set up soon, the magistrates' courts would not need to adopt this procedure, because they could exercise their compulsory powers under s. 19 of the Criminal Justice Act, 1948.

Road Traffic Laws and their Administration

This was the title of an address by Professor A. L. Goodhart, K.B.E., K.C., to the meeting of the Pedestrians Association at Caxton Hall on May 10, 1950. His themes were that the law is not strict enough either to deal adequately or in dealing adequately with offences against the traffic laws, particularly those whose offences involve death or injury to others, that it is on the criminal law we must rely in this matter since compulsory insurance has removed the sanction which the fear of heavy damages might have imposed, and that coroners' inquests on road deaths should in every case be replaced by a special expert investigation and inquiry at which an inspector, subject to appeal from his decision, should have power to revoke the driving licence of any driver who he thought had been shown to be unfit to drive owing to carelessness or incompetence.

We cannot help thinking that not all of Professor Goodhart's arguments can be accepted without question. He said, for instance, that he asked three Americans whether in the past

ten years any of their friends had been killed and the answer was "No." Then he added that in that period five of his friends had been killed in England by motor vehicles and went on to add that he doubted whether there was a single person in the room who had not lost some friend by violent death in recent years. We can only say that the writer of this note has not, and neither has any one of six friends whom he questioned. The inference apparently to be drawn from this part of the speech (certain statistics were quoted in support) is that America is a more law-abiding country, so far as traffic offences are concerned, than this is, but no mention was made of the difference in density of population and other facts which might affect this comparison.

We are not concerned, of course, to suggest that the position in this country is anything like satisfactory, but we would put forward for consideration the suggestion that the remedy does not lie simply in more and better penalties against motor drivers. The real offence is conduct, whether as a pedestrian or as a motorist, which is careless or reckless and results in injury to other persons. If really heavy penalties are to be the rule in every case of conviction for a motorist, is the pedestrian to escape all penalty who, by recklessness, impatience or what you will, causes a motorist who is driving quite properly to swerve violently, become involved in a collision and be injured? Watch any controlled crossing, where there is a pause during which all lights are red for the pedestrians to cross, and see whether pedestrians wait or whether they dodge and jump amongst moving vehicles. Are they to get off scot free unless they are punished by colliding with some vehicle? We deprecate the discussion of the matter on a pedestrian versus motorist basis, but if it is to be so discussed there is more than one side of the argument to be put.

We do agree wholeheartedly with Professor Goodhart that disqualification is not used nearly enough in cases where quite serious offences are proved.

Negligence on the Highway

In a Note of the Week under this heading at p. 41 *ante*, we asked what is the appropriate penalty under s. 78 of the Highways Act, 1835, for an offender who is neither the driver nor the owner of the vehicle in connexion with which an offence against that section is committed. We are indebted to the Solicitor for the Metropolitan Police for calling our attention to the case of *Williams* v. *Evans* (1876), reported at 41 J.P. 151, which supplies the answer to our question. All three judges thought the point a difficult and doubtful one, but they came to the conclusion that in order to give proper effect to the provisions of s. 78 as a whole the penal part of the section must be read as enacting that if the offender is the owner of the carriage by which he commits the offence the maximum fine to which he is liable is £10 and that all other offenders, whether they be drivers or not, are liable to a maximum fine of £5.

Local Authorities and Tort

The current number of the Cambridge Law Journal contains as usual a quantity of interesting matter. For local authorities, the most important of its articles is by Mr. D. Asshton Cross and deals with the liability of corporations for the torts of their servants. If we remember rightly, the late Professor Jenks somewhere speaks of *Poulton* v. *L. and S.W. Railway* (1867) L.R. 2 Q.B. 534 as based upon judicial misapprehension of the principle of *ultra vires*. Professor Winfield, on the other hand, basing himself upon that case in the fourth edition of his *Law of Torts* says: "It is certain that, whatever the law may be where the corporation has expressly authorized the commission of an *ultra vires* tort, no authority to the servant or agent to commit such a tort can be implied." If this were the law, it would provide an easy let-out for most corporations in regard to most of the things for which damages against them are sought to be recovered. It is after all comparatively rare for the directors, even of a trading company, to give express authority to the company's servants to perform a wrongful act. Many of the acts for which damages are recovered against them amount, really, to doing the right thing in the wrong way, *e.g.* negligently driving a vehicle which is out upon its lawful business, or failing to secure a package which is being lawfully unloaded by a crane. In these cases Winfield's view of the law can be applied without injustice, because the injured plaintiff recovers in negligence, not by reason of the wrongful nature of the act itself which the servant was performing. There are, however, other cases where what the servant does is completely outside what he ought to do, and, where local government corporations are concerned, it is possibly these which give rise to the greater number of claims. In practice, the courts have not allowed either trading corporations or public authorities to get away with the full implications of *ultra vires* as applied by Winfield, and in practice therefore less injustice has followed than might have been expected. It is however suggested that the root of the matter is, shortly, this: a relationship exists between one person and another. One of them happens to be a corporate body which can only act through agents. There can be no real justification for excusing that body, merely by reason of its corporated character, from a liability which would have attached to it if the persons who compose it had not been incorporated. The logic of the thing can most simply be seen where the corporation is an ordinary small company, carrying on a family business. If three brothers in partnership employ a servant who wrongs an outside party whilst engaged upon the business of the partnership, nobody doubts that the partners are liable, and that the wronged party can recover against their available resources. It would be a monstrous state of the law if, by the formal and technical act of turning themselves into a company, the brothers could ensure that the person wronged could not have any resort against the company's assets, unless he could prove that the directors (who are also the sole owners of those assets) had expressly authorized the wrongful act.

Medical v. Lay Administration

The Society of Medical Officers of Health is apparently seeking the support of the British Medical Association to its objection to the tendency which it believes is being followed in the National Health Service to replace medical men by lay administrators. This view coming from a body representing medical men could, rightly or wrongly, give the impression that they are more concerned with their own personal position than what is best for the administration as a matter of broad principle. Controversy has arisen from time to time in the past in connexion with the administration of local authority hospitals. In the case of the old workhouses, however large, the administration was in charge of a non-medical man, but when the workhouse became a hospital it was the usual practice for a medical superintendent to be put in charge of the whole administration, although there was a steward who undertook most of the responsibility on the non-medical side of the administration. The lay administrator was usually, but not invariably, subordinate to the medical superintendent. In the case of the voluntary hospitals, however, it was the general practice for a layman to be in charge and through their organization a high standard of professional attainment was reached. We cannot help feeling that there is much in favour of this practice, particularly in these days when economy in administration is so important. Further, it seems at least a pity to waste the time of a highly

trained medical man on pure administration. As was said some years ago to a government committee concerned in mental hospital administration, it does not follow that a good medical man is necessarily a good administrator although there are outstanding examples where this is the case. We do not expect the Minister of Health is likely to be stampeded against his will by the doctors, but if there is any real difference of opinion as to what is the best practice it might be one on which a special investigation would be helpful.

Place Names

English law is slapdash about names. For people it assumes there is a christian name—with no real warrant for this assumption, since baptism is not obligatory and there have since the middle ages at any rate been plenty of resident subjects of the Crown who were not Christians. It also assumes, in modern times, that there will be a family or surname, but, considering the practical importance of nomenclature in everyday affairs, it is remarkable how casual the law is about both types of name. So also about places. For the most part the law takes their names for granted. A firm or public body can build a new town and name it after the chairman, like St. Helier, or the firm's merchandise, like Port Sunlight: so long as the founder of a community does not form a company or other trading body, and name the company's or body's property after the Australian and New Zealand forces, he can call it anything he fancies. But most place names are old; it would be too much to say that they have belonged to the locality from time immemorial, since in 1189 most of the localities now settled and separately named must have still been waste or woodland, and some, like Iron Bridge and Newhaven, have a modern, demonstrable, origin, whilst even Peterborough can be traced to a point of time when it was as novel as Peterlee today. But of most names, at any rate, the origin is buried in the oblivion of centuries. This works all right until somebody takes it into his head to make a change, sometimes from a notion that the old name has a vulgar sound, sometimes for some less foolish reason. Section 147 of the Local Government Act, 1933, makes a series of provisions for changing the names of parishes, districts, and non-county boroughs, but there is no similar power to change the name of a county, a county borough, or an area smaller than a parish. For any of these it seems that an Act of Parliament would be required. This is probably a good thing. Before there was anything on the statute book like s. 147 of the Act of 1933, it is said that the notoriety which attached to Rugeley, from its being the home of Palmer the poisoner, led respectable inhabitants to approach the then Home Secretary to see what could be done to find a different name—and that he indicated willingness to help them if his own were adopted. Since he was Lord Palmerston, the Rugeley worthies decided that the town would do better as it was. There is a moral here: if you live at Bere or Ballybunion, Crawley or Duddeston, Dogsdyke or Totterdown, Stewpony or Swineshead, or at some other place of which the name causes laughter among fools, you will know that it is no upstart; its lineage is parallel with Warren and Constable, Marshall, Forester and Smith.

APPROVED SCHOOLS

There is no doubt that approved schools, properly staffed and well-run, can do a great deal to prevent juveniles who have for one cause or another had or made a bad start in life from becoming useless members of society as they grow into adult life. From time to time one hears criticisms that approved schools are setting too high a standard and are so conducted that it is worth while for a juvenile whose home circumstances are unfortunate to commit offences until he achieves his ambition by being sent to an approved school. There may be some foundation for such criticisms, although it must be remembered that at the lowest the schools must set a good standard, and that this must inevitably be a good deal better than many unfortunate children have to endure in their home surroundings.

This article is prompted by a perusal of the *Approved Schools Gazette* for May, 1950, which might well be read by all who are interested in the problems of juvenile delinquency and have not the time nor the opportunity to visit a number of approved schools and to learn at first hand of their work and difficulties.

Staffing is obviously a basic problem. In any school the masters set the tone, and no school, whatever its history or traditions, can continue satisfactorily unless the masters are equal to their task. In an approved school, which has always a considerable proportion of delinquent and difficult pupils, the problem is a much more difficult one, and it is of first importance that the right people should be found. On this subject we find in the *Gazette* complaints about teachers' salaries, and it is noted in particular that in approved schools matrons are in many cases receiving less remuneration than those whose work they have to supervise. A claim in this matter submitted to the Home Office has been rejected by the Treasury because of the national wages "freeze." It is stated that the Home Office admit the validity of the claim and gave it every possible support on presentation. They have, it is said, undertaken to re-open this question and that of responsibility allowances for headmasters when the stalemate is ended and the political position is changed one way or the other. Good staffs for approved schools can probably never hope to be paid on a scale comparable to the incomes earned in some other professions and by some in industry, but it must surely be the aim of those in authority to see that the scales are adequate to attract and to keep the right people.

In this latter connexion it is noted in the *Gazette* that there has been since the end of the last war a steady decrease in the number of children committed each year to approved schools. It is also stated that according to recently published figures the percentage of successes amongst those who left approved schools on licence in 1945 shows a marked improvement on that for the previous year. It is pointed out that this indicates that the approved school staffs are doing a good job of work; but the unfortunate result of the combination of the fall in the number of committals and the successful dealing with those who are committed is to lessen the need for approved schools. Consequently, in a way, the more successful the approved schools are in their efforts satisfactorily to train those committed to their care the less likelihood there is of the staff being able to feel secure in their jobs. We sympathize with the staffs in this matter, but it cannot be pretended that one could justify keeping open more approved schools than are necessary in order to avoid discharging the staffs of those which ought to be closed. Presumably if there are fewer children in approved schools there are more in other schools, and the solution may lie in finding some way of absorbing the surplus staff of approved schools into the ordinary educational establishments. We hasten to add that we speak here without any expert knowledge and are quite prepared to be told of difficulties of which we are unaware.

We agree wholeheartedly with the view expressed on p. 34 of the *Gazette* as to the desirability of bringing home to parents their responsibility for the misdeeds of their children. The paragraph in question refers to the considerable use being made at Oxford of s. 55 of the 1933 Act by which a parent can be made to give security for the good behaviour of his child. It is said that fewer and fewer cases have appeared before the court, and that this method of dealing with parents is the only effective way of "dispelling that irritating complacency and apathy which are often encountered in the parents of delinquents." The attitude of parents to their children is, of course, a matter of vital concern to the staffs in approved schools, because the period in the school is merely a period of preparation for return to ordinary life where the parents and the home can mean so much, or, unfortunately, so little.

The *Gazette* notes with approval the opening by Manchester Children's Committee of a boys' home for boys committed to its care by local courts and for whom accommodation could not be found in residential special schools. It is pointed out that boys of the type for whom this home is intended have all too often found their way, *faute de mieux*, into approved schools, although their records showed them to be unsuitable for approved school training. It is recognized, of course, that the committals of such boys to approved schools is undesirable. As stated above, they cannot benefit properly from the training, yet they occupy a great deal of the time and attention of the staff which could be much better devoted to those pupils who can benefit. The *Gazette* gives some details of this new home which is called "Lynwood" and is in Holme Road, Weisbury, Manchester.

There is a very interesting summary of the leisure time activities of the boys at the Glamorgan Farm School, which is for seventy-six senior boys. They are given under the following headings: hobbies; games, athletics and physical training; magazines and general printing; dramatics; music; pets corner; farm and garden clubs; indoor games. We agree with the concluding sentence of this article which is that "a school may have the best recreational equipment possible but without an adequate personnel to inspire and interest the pupils the value of leisure-time activities will be entirely lost." The point is made that this is one of the functions of the newly appointed house master whose duties are such that he is not tired out by a day devoted to strenuous work, and can come to his evening duties fresh and full of vigour.

Perhaps the most interesting and inspiring part of the *Gazette* is that in which are printed letters from a number of girls who were at one time at St. Lawrence's School, Trant, Tunbridge Wells. In the *Housewife* of March, 1950, there appeared a letter querying what percentage of successes approved schools have and asking some of those who had attended such schools to write giving their views on the point. Four letters are published showing that three of such girls are happily married, and all four are extremely grateful for the training they received in the school. They stress the point that they had there the opportunities that had previously been denied them and they praise the devoted work of the staff of the school. It must be very gratifying to the staff to see such letters and to know that they have done good work and have turned into useful citizens those committed to their care.

No one will pretend that all approved schools are perfect, but that they can do and are in many cases doing excellent work is beyond doubt. The *Gazette* serves a useful purpose not only in making known to those outside the approved school world what goes on inside it, but also by enabling one school to know and possibly to profit by what another school is doing. Probably none of them will contend that it has nothing to learn from the others.

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 265 ante*)

10. LINCOLNSHIRE

The population of the county is 513,890 and the area 1,692,773 acres. The authorized strength is 693 and the actual number engaged at the end of the year was 646, compared with 612 at the beginning of 1949. In July Home Office approval was given to a proposal by the police committee to increase the size of the force by three inspectors, four sergeants and fifty-six constables. Included in the strength are twenty policewomen, seventeen cadet clerks, forty-five female clerks and twelve whole-time cleaners.

From October, 1948 to July, 1949, no progress was made in filling vacancies; since then the position has improved "and this is, no doubt, due to the higher rates of pay . . ." continues the report. The acceptance of four officers on transfer from other forces brought the intake for the year up to eighty-eight, a decrease of twenty on the previous year. Of 413 applications received 148 were rejected on account of being over age or deficient in the educational or physical standards, 169 failed to return the application form and ten withdrew.

The sickness record was normal, 7.95 days per man as against 6.54 in 1948. The police committee has adopted a recommendation of the medical officer, that all applicants for appointment to the force should undergo an x-ray examination in addition to the ordinary medical examination.

Under the heading discipline the report indicates that twenty-four complaints were received alleging offences against the discipline code by members of the force; as a result five men were cautioned, six reprimanded and one probationer discharged; in ten cases the charges were not proceeded with and in the other two the probationers tendered their resignations.

Promotions were made as follows: to chief superintendent one, four to inspector, and eleven to sergeant's rank; in addition a number of temporary and acting appointments were made. It was not possible to find a suitable woman to fill the vacancy for an inspector at headquarters as none of the women constables had passed the qualifying examination for promotion to sergeant. The wastage during the year amongst women police amounted to four; three entrants were received out of thirty-three candidates.

The strength of the Special Constabulary has been fixed at 2,139 including sixty women. At the end of the year there were 1,665 enrolled special constables and 1,278 were provided with uniform. There were ninety resignations. "This sudden exodus was not unexpected, as it followed an announcement that courses of training in civil defence would soon be recommencing, which those in advancing years would naturally find too exacting." Sixty-six recruits were obtained as a result of the national campaign for special constables. During the year this department of the force performed duty on public occasions and in the pre-Christmas period large numbers were successfully employed in

preventing large scale poultry thefts. Eighteen temporary constables were authorized for duty at seaside towns during the summer season, for periods varying from three to five months, but only two pensioners were actually recruited.

The provision of accommodation for married officers has continued to be one of the major problems. The number of houses owned by the police authority is 262 and 139 are rented; in addition seventy-six officers rent houses privately. A large number of recruits appointed during the year are married and the waiting list for accommodation remains almost as long as at the commencement of the year. The post-war building programme has been extended to provide 225 houses.

Crimes recorded totalled 4,436 compared with 5,054 in 1948. There was a reduction of 160 in breaking offences, 427 of simple larcenies, and lesser numbers in respect of receiving stolen goods, stealing from shops and stalls and thefts of bicycles; fifty-two *per cent.* were detected as against fifty-six *per cent.* in 1948. Juveniles were known to have been responsible for 577 crimes, a decrease of thirty-seven.

There were at the end of 1949, 1,633 premises licensed for the sale of intoxicants and 216 licensed clubs. Proceedings were taken against eight holders of justices' licences and six convictions were registered. Two clubs were struck off the register following prosecutions, that they were not being conducted in good faith. Convictions for drunkenness numbered 182 against 151 the year before. Twenty-four of the total were charged with driving motor vehicles whilst under the influence of drink.

The total number of road accidents was 5,057, in 1948 it was 4,402; there were seventy-four fatalities, twenty-four more than in the previous year. In addition 1,378 persons were injured.

11. NEWPORT

The population of the borough is 101,300 and the area 7,873 acres. The establishment numbers 188 including six policewomen. The actual strength has increased by one, from 149 in 1948 to 150. Policewomen's strength fell from three to two. Days lost through sickness amounted to 1,904. Crimes recorded numbered 1,366 compared with 1,618 in the previous year; forty-seven *per cent.* were detected. The value of property stolen was £8,875, a decrease of £7,673. An appeal was made for the third successive year to motorists to lock their vehicles before leaving them unattended, there were 104 complaints of thefts from vehicles. "An unlocked unattended motor car often provides an irresistible temptation to steal without serious risk of detection." Juveniles were responsible for 157 indictable offences, the year before the number was 164.

There are 146 licensed houses in the borough and only one licensee was prosecuted for an infringement of the liquor laws. During the year 109 persons were charged with drunkenness, twenty-nine more than in 1948. Sixty-four clubs, having a membership of 37,400, are registered.

Road accidents numbered 885 against 702 in the year before; eight people were killed and 338 injured, compared with ten and 336 in 1948.

12. MIDDLESBROUGH

The population of Middlesbrough is 138,960 and the area 7,205 acres. The authorized establishment is 222 and the actual number engaged at the end of the year 175. In addition twelve civilians are employed as clerical assistants, telephone operators, cadet clerks, station attendants and a motor mechanic. During the year seventeen men were recruited and one re-appointed after having been in civilian employment. "Attempts are made by men of poor education to enter the force but there is no room for them in the police service today." Thirteen men left the service, five on pension. Five men were promoted to sergeant's or temporary sergeant's rank. Absences through sickness numbered 1,931 days, an average of 11.03 days per member; last year the figures were 1,290 days and 7.64 per member.

There were 1,409 indictable offences against 1,440 in 1948, but in 1948 there was an increase of 300 over the 1947 figure. "Consequently, although the figures for the year under review show a slight reduction on overall crime, the total figure is well above the average and there is no foundation in fact for any optimistic reasoning that the post-war high incidence of crime in this area is diminishing." A detection percentage of sixty-eight was achieved. Stolen property amounted to £9,698 compared with £16,845 the year before; 664 persons were charged with indictable offences, 348 being juveniles, in addition eighty-three juvenile offenders were cautioned by the chief constable. The corresponding figures for 1948 were 771 persons charged, 397 being juveniles and fifty-six juveniles were cautioned.

During the year 108 false alarms of fire were received, "and although this figure is slightly less than the total for 1948 it still shows a high incidence of this senseless and reprehensible type of offence," points out the report. Several offenders were prosecuted.

There are 177 licensed premises within the borough; no proceedings were taken against any licensee. 607 males and fifty-one females were charged with drunkenness, being an increase of 104. The fifty-two registered clubs have a membership of 30,705. Summonses were issued against one club where intoxicants had been supplied and consumed during non-permitted hours.

Fourteen people were killed in road accidents and 202 injured. During 1948 nine people were killed and 134 injured.

13. SWANSEA

The population of Swansea is 164,797 and the area 21,600 acres. The official strength of the force is 251 including three policewomen; the actual strength at the end of the year was 202. Recruitment fell below expectations, male recruits totalled twenty, but when resignations and retirements on pension were compared a gain of only two resulted. "It is encouraging to find that a larger number applied to join the force and were accepted in the last quarter of the year than during the first nine months." Promotions included three men to superintendent, chief inspector and inspector respectively and eleven men to sergeant's rank. Sickness caused a loss of 1,998 days against 2,111 the year before.

Indictable offences totalled 1,521 compared with 1,834 in 1948; 491 persons were proceeded against for crime and thirty seven *per cent.* were detected. Stolen property was valued at £13,245; in 1948 the value was £49,273. Property recovered amounted to £1,790 as against £3,781 a year before. Juveniles brought before the courts numbered 265; in 1948 there were 273 juveniles who committed criminal offences.

Twelve people were killed in road accidents and injuries sustained by 483; the year before there were nine fatalities and 454 people injured. "An analysis of the causes of accidents shows little change each year and the old familiar contributory factor of carelessness in one form or another still predominates, with pedestrians the principal offenders."

In the borough there are altogether 284 licensed premises and forty-six registered clubs. Males and females charged with drunkenness numbered 153 and twenty-seven respectively, an increase of thirty-seven on the 1948 figure. Three prosecutions were taken against the holders of justices' licences for infringements of the liquor laws.

(*To be continued*)

TORTIOUS GIFTS OR LOANS

The case of *Ball* v. *London County Council* [1948] 2 All E.R. 917; 113 J.P. 315, attracted notice in local government circles not so much on account of the academic point of law, on which in the court below it had turned, but because it would, if not upset upon appeal, have attached an entirely new disability to landlords and particularly to local authorities. Having, however, been upset upon a point which was not the main point of interest, it still leaves an uncomfortable doubt. In that case the London County Council, after letting a dwelling-house to a tenant, installed gratuitously a new boiler which they were not required to do by the tenancy agreement. This is the sort of thing which is happening every day, or would happen in a rational world where landlords, local authorities and others, were permitted to improve their property, and incidentally provide greater comfort for their tenants, though not obliged to do so. The boiler so installed was dangerous because it had no safety valve, and upon the lighting of a fire, at a time when the pipes connected to the boiler were frozen, it exploded, injuring the tenant's daughter. Stable, J., dealing with the case in the King's Bench Division, distinguished it from those in which a tenement was defective at the time of its being let, where it is well settled that the tenant takes the risk of concealed dangers even when known to the lessor. Having got those cases out of the way, he held the landlord liable upon the facts, and said it made no difference whether the landlord's careless action had been contractual or gratuitous. The Court of Appeal reversed Stable, J.'s decision, not upon any grounds relating to the gratuitous quality of the landlord's action, but because they considered themselves bound by *Malone* v. *Laskey* (1907) 76 L.J.K.B. 1134, to hold that, in order to succeed, the plaintiff ought to have proved that the boiler was dangerous in itself, and this she had failed to do. The decision is thus unsatisfactory from two points of view. It seems very hard upon a plaintiff in such circumstances, to have to prove that the object, which undoubtedly did injury when used in a manner not unnatural to an ordinary uninstructed person, was also dangerous *per se*. This might well be a matter of conflict between expert witnesses. So far, we should have liked to see such a case decided upon the ground *res ipsa loquitur*. The decision is unsatisfactory also, because it leaves unsettled at the hands of the Court of Appeal the view of Stable, J., that the gratuitous quality of the defendant's action made no difference. If he is right in this, the principle is far reaching. Most English lawyers a few years ago would have said that a person, who lent or gave to another an object which turned out to be dangerous, was under no liability to him—leaving aside of course possible complications such as malice, or the setting of a trap, or (in modern developments) actual knowledge by the lender or giver that the thing was dangerous. Within the rather rigid framework of English legal thought, it would have been said that there was no consideration for the gift or loan and therefore, distinguishing the matter from a sale or hiring, the recipient of the dangerous article had no redress if he was injured. This might almost seem to follow inevitably, from the established English doctrines about consideration. It was, we suppose, yet another of the tunnelling operations of the bottled snail, which has partly undermined this position like so many others. Ramifications of this now historical animal's suicidal activities are, indeed, as yet far from fully traced. Once the House of Lords established that his presence gave an action of tort to a stranger with no privity of contract, against the person whose negligence put him where he should not be, it could be argued that logic demanded extension of the same principles to a gratuitous gift or loan. In *M'Alister or Donoghue* v. *Stevenson* (1932) 101 L.J.P.C. 119, the fact that several contracts of sale *inter alios actae* happened to have formed part of the causative chain linking the plaintiff (who had received the bottle as a gift) to the defendant (the manufacturer of ginger beer which formed the watery tomb) was, as between them, not logically relevant. Consider, however, the position which arises if the snail is allowed to crawl into other gratuitous relationships. A gives to his friend B, a sciatic patient, a walking stick which breaks when B leans his weight upon it. C lends to D a bicycle, which would be safe for a person of normal caution, but has brakes unequal to D's habit of coasting down hills, whereby D suffers injury (Miss Ball, the second plaintiff against the London County Council in the case with which we started, would not have suffered injury if she had possessed the average degree of knowledge, which would prevent most people from lighting a fire in the boiler of a hot water system which was already frozen). E buys a strawberry ice for F, and it turns out to be poisonous. It is difficult to see where the line is to be drawn, once one gets away from the old-fashioned English standard of consideration. The new danger, if there be a danger of legal liability, will not, probably, be a serious deterrent to commonplace benevolence. It may, however, deter property owners from improving property. A landlord who is minded to do something for the greater comfort of his tenant, something which will be of no particular benefit to himself as landlord, may be swayed in favour of not doing it, if he realizes that any deficiency in the manner of its doing, or in the quality of the thing supplied, may involve him in an action for damages. Before *Ball* v. *L.C.C.*, *supra*, was decided, the textbook writers had been divided in their opinions about the effect of *Donoghue* v. *Stevenson*, *supra* (to give it the abbreviated name by which it is most often cited) when read with *Chapman* (*or Oliver*) v. *Saddler & Co.* (1929) 98 L.J.P.C. 87, which was three years earlier. Upon the basis of these two decisions, the tenth edition of *Clerk and Lindsell* thinks there is a wide liability, whilst *Winfield* restricts liability to cases where the defendant had wilfully or negligently not revealed a defect of which he knew. The same line is taken by *Salmond*. In *Chapman* v. *Saddler & Co.*, *supra*, a firm of stevedores were raising cargo from the hold of a ship by means of rope slings. A second firm had the contract for conveying the cargo from the deck to land, and were allowed by the stevedores to use the same slings without charge. One of the second firm's workmen was killed, by reason of a defect in one of the slings, which might have been discovered by the exercise of reasonable care before the sling was attached, but could not be detected by a workman while it was being used. The personal representatives of the man who was killed succeeded in the House of Lords in recovering damages from the stevedores. It will be observed that this was quite a different cause of action from whatever claim the man or his relatives might have had against his own employers, either under the Workmen's Compensation Acts, or in contract, or in tort at common law. There was no contract between him and the stevedores, who had merely allowed the use without payment, by him or his employers, of property belonging to them which was not to their knowledge dangerous. Although the House of Lords came down in favour of the workman, there are passages in the speeches which show some of their lordships to have been anxious not to be said to establish precedents about gratuitous bailments. *Chapman* (*or Oliver*) v. *Saddler & Co.* and *M'Alister* (*or Donoghue*) v. *Stevenson*, began in the Scottish courts (hence their appearing in the "P.C." volume of the Law Journal Reports, above cited) and although both have been regarded as authorities also upon English law *Halsbury* merely cites the cases as showing that there "may" be a

duty, without explaining why, or asserting that as a rule there is. The relation between English law upon the subject of gratuitous gifts or loans, as developed up to the present time (and probably still in process of development) and other systems of law, is examined in an article in the *Law Quarterly Review* for January, 1950, to which the advisers of property owners, in particular, might usefully refer. American case law seems mainly to agree with the hitherto prevailing doctrines of the English law, but the Roman law, generally followed outside the common law system, was not the same. Space does not permit our dealing here with the Roman law or the modern European law based upon it; for this we refer readers to our learned contemporary. But, if only because of the approximation since *Donoghue* v. *Stevenson* to the continental point of view about negligence as a cause of action, it is worth considering whether the traditional English doctrine can safely be relied on and, if not, whether sensible distinctions can be drawn between different classes of unsuspected dangers.

THE RENT ACTS: WIVES AND WIDOWS

By A. G. ROBINSON, M.A.

On the death of the tenant of a dwelling-house within the Rent Restrictions Acts, the position of his widow is tolerably clear. If he died a statutory tenant, she also is entitled to stay in possession as a statutory tenant, provided that she resided at the time of his death in the house. It is not necessary for her so to have resided for six months prior to her husband's death, and she does not lose protection by re-marriage: *Apsley* v. *Barr* [1928] N.I. 183. This result does not arise from any provision directly and expressly protecting her, but from the definition of "tenant" in s. 12 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, by which that expression includes the widow of a tenant who was residing with him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court. A woman, not married to the tenant but living with him as his wife under his name, is obviously not his widow. The word "widow" connotes marriage. Nevertheless, such a woman would, in the writer's opinion, probably be held entitled to the protection given by the definition: this, as a member of the "family"—provided there was no other member of the family whom the court decided to have a better claim. (There might, for instance, be an adult son of the tenant's marriage.) Leaving aside complications of this sort, the view that a man's mistress *living with him as his wife* (the italicized qualification is important) is a member of his "family," in the present context, is supported by a commonsense view of the purpose of the definition, which apparently was designed to avoid breaking up a home, and by an observation, *obiter* but not irrelevant, in *Carter* v. *Emson* (1947) 14 L.J.N.C.C.R. 291, where his honour Judge R. Shove said: "Nor am I prepared to state as a general proposition that, in every instance in which a household has not been regularized by a legitimate union of its principals, no member of it can claim to be a member of a family." He pointed out, however, that the Acts give protection to a member of the deceased tenant's "family" and not "household," and he held that a woman who had been employed as a housekeeper did not become a member of the deceased tenant's "family" by reason of the fact that she had been his mistress for some nineteen months and had borne him an illegitimate child. Upon the facts in that case, his honour based his decision on ordinary usage: would a man, even though it was known to certain people that his housekeeper had become his mistress, and that he was the father of her child or children, speak of her, or of the children, as belonging to his "family" *when she had not reached the stage of passing by his name* (see the earlier italicized qualification of words in the contrary sense). The learned judge thought not, the distinction being apparently the overt and ostensible character, or otherwise, of the union between what he called the "principals." So far as the writer is aware, there is no more direct authority: partly, it may be conjectured, because a landlord desiring to get rid of an ostensible widow, that is, a woman passing by the name of the deceased tenant, will be unlikely, unless for some reason he is sure of his facts, to put her to proof of the marriage—the more so since, even if he demonstrated that she was not a "widow," he would still in most cases be faced with the hurdle of showing she was not a member of the "family."

Where a husband dies testate a contractual tenant, his tenancy vests in his executors and they should vest the contractual tenancy in his widow by an assent as soon as possible—assuming that she is entitled to the tenancy under the will. There is no need to wait for a grant of probate, and it is undesirable to do so because if a notice to quit served on the executors expires before the date of the assent it is possible that no-one will be entitled to the protection of the Rent Acts. The wife never had a tenancy, and the executors cannot become statutory tenants unless they happen to occupy the house: *Skinner* v. *Geary* (1931) 95 J.P. 194. It is most unlikely that an assent would be held to be an "assignment" within the meaning of paragraph (*d*) of sch. I to the Act of 1933. Although there were earlier cases to the contrary, Bayley, J., in *Doe d. Goodbehere* v. *Bevan* (1815) 3 M. and S. 353, treated it as settled law that a "devise of the term by the lessee is not a breach of the covenant not to assign." Therefore by analogy it is almost certain that an assent made between the service and the expiration of a notice to quit is effective. If, however, the widow was not entitled to the tenancy under the will but the assent was made nevertheless with the consent of the beneficiaries it might well be an "assignment" within para. (*d*). It would, of course, attract stamp duty.

If a contractual tenant dies intestate a landlord can determine the tenancy by serving notice to quit on the President of the Probate, Divorce and Admiralty Division (c/o the Treasury Solicitor) provided that no grant of administration has been made: *Smith* v. *Mather* [1948] 1 All E.R. 704. A subsequent grant of administration cannot restore the tenancy because the doctrine of relation back does not apply to vest the tenancy in the administrator as from the date of death: *Long* v. *Burgess* [1949] 2 All E.R. 484. When, after a grant of administration, notice to quit is served on an administrator he is in much the same position as an executor *vis a vis* the landlord. As has already been explained he should assent to the vesting of the tenancy in the widow as soon as possible and in any case before the expiration of the notice to quit. It should not be difficult to justify such an assent. The widow could, for example, take the tenancy as partial satisfaction in specie of her £1,000 and it would then be necessary to have the stamp duty on the assent adjudicated.

When a wife is left in occupation of a house after the departure of her husband otherwise than by death, her position is more uncertain. Her husband's tenancy only remains protected so long as he retains actual or constructive possession of the

premises. In *Brown* v. *Brash* [1948] 1 All E.R. 922, it was pointed out by the Court of Appeal that questions of non-occupation are questions of fact and degree. After a prolonged absence the legal results would be that the tenant must rebut the presumption that his possession has ceased. He must establish a *de facto* intention to return, and a long absence must be covered by some outward and visible sign of his intention to return, such as leaving a caretaker or a licensee in possession. An imprisoned tenant is in no better position than one whose absence has been voluntary. These principles may constitute a general rule, but if so the general rule has been eaten into by the indulgence which the courts have displayed towards a wife who, through no fault of her own, has been deserted by her husband. The same consideration is not shown towards a divorced wife (*Robson* v. *Headland* (1948) W.N. 438). A husband may be held to be in constructive possession of a house through his wife, although it is perfectly clear that he has made efforts to shake off his tenancy, and that he has no intention of returning to the former matrimonial home. The headnote to the report of *Old Gates Estate Ltd.* v. *Alexander and Another* [1949] 2 All E.R. 822 reads: "A statutory tenant living with his wife in a flat which constituted the matrimonial home left the premises following a quarrel with his wife and purported to surrender them to the landlords by agreement. His wife remained in occupation with the use of his furniture . . . the husband gave her written notice revoking any authority she might have from him to occupy the flat." It was held by the Court of Appeal that the tenant had not given up possession as he remained in occupation through his wife and furniture. Attention was drawn to the fact that the tenant had left his furniture in the premises, but Bucknill, L.J., said: "I should have very great doubt whether any revocation of permission to an innocent wife to live in the matrimonial home . . . would have any legal effect." In the opinion of Denning, L.J., " the wife has a very special place in the matrimonial home . . . Even if she stays there against his (the husband's) will, she is lawfully there, and, so long as she is lawfully there, the house remains within the Rent Acts . . . " Thus the Court of Appeal might appear to have left it open for a wife to argue that her husband retains constructive possession of the matrimonial home which he has wrongfully left in spite of having taken the furniture away with him. There is, however, another decision of the Court of Appeal to the contrary which has not been widely reported. In *Taylor* v. *McHale* (1948) 151 E.G. 371, a statutory tenant told his landlord that he was leaving and took out his furniture from the house. He paid no more rent and made it quite clear that his wife, who remained, was not there as his licensee. It was held that the tenant had lost his statutory protection and that his wife was a trespasser. In the case of *Middleton* v. *Batcock* (1950), *The Times*, March 2, reported while this article was in the printer's hand, the right of a deserted wife to remain in occupation of the matrimonial home, against the wishes of the husband and (where the Rent Restrictions Acts apply) the landlord, was further emphasized.

Finally it should be remembered that if a landlord accepts rent from a wife who remains in possession of a house which her husband has left for any reason he may create a new contractual tenancy in her favour. The decision in *Clarke* v. *Grant* [1949] 1 All E.R. 768 is not directly applicable, and a new contractual tenancy might perhaps be inferred more readily than in the case of a tenant who holds over and pays rent after notice to quit. If the previous contractual tenancy of the husband has, for example, vested in his personal representatives or has otherwise not been determined, the wife may nevertheless by paying rent acquire a tenancy by estoppel, capable of devolving on her personal representatives, and one which may become as estate on the determination of the outstanding interest: *Mackley* v. *Nutting* [1949] 1 All E.R. 413.

REDEVELOPMENT AND MANPOWER

[CONTRIBUTED]

Presumably, the redevelopment of the outworn and shabby parts of so many of our old towns is not yet an economic proposition. The Town and Country Planning (Grants) Regulations recently published indicate that the Government is willing to pay substantial deficiency grants to those local authorities who undertake schemes of redevelopment which are satisfactory to the departments concerned. Redevelopment is a local government function of the county borough and county district councils, first granted by the Town and Country Planning Act, 1944.

For many years redevelopment has been recognized as a growing problem, and a problem that would not be removed without a special approach. Some local authorities had made town planning schemes covering the older areas, but the Act of 1944, whilst passed mainly because of bomb devastation, was the first general enactment making provision for the redevelopment of areas of bad layout or obsolete development. Immediately after the end of the war nothing much could be expected in the exercise of such a function, and the provisions are now to be found in the Town and Country Planning Act, 1947. Normally, apart from other considerations, such redevelopment cannot be started until the development plan is in operation, because the areas have to be designated in that plan. But, unless the time table in the Act is to prove more than can be achieved, development plans can be expected to be in operation at a date soon enough for the schemes for redevelopment to be under preparation now.

The grant regulations provide for rather tight central control. According to local resources, the grant at the commencement of a scheme may be as high as eighty *per cent.* of the deficiency, and the keynote of the regulations is the deficiency account which the local authority must keep and upon which will depend the amount of the grant to a great extent. The central control is perhaps not beyond what is in the interests of both central and local government, and it serves to show the practical limitations upon what is more generally recommended by the Local Government Manpower Committee whose first report is now available.

The terms of reference to that committee, whilst drawn in terms of economy in manpower, have enabled the committee to start on a broad review including the relationship of central and local government. In their general approach, the Manpower Committee recognized that local government authorities were " responsible authorities competent to discharge their functions and that although they may be statutory bodies through which government policy is given effect and operate to a large extent with government money, they exercise their responsibilities in their own right, not ordinarily as agents of government departments." It followed, in the opinion of the committee, that the object should be to leave as much as possible of the detailed management of the scheme or service to the local authority and to concentrate the department's control at key points where it could most effectively discharge its responsibilities for government responsibility and financial administration.

The Manpower Committee recommended that local authorities' schemes in many services should be accepted by the departments if drawn up by technically skilled engineers or architects, according to the nature of the scheme. In regard to redevelopment schemes, the Ministry of Town and Country Planning impose two special conditions. First, the local authority are to submit such information as will enable the Minister to compare the estimated cost of the scheme with the financial return that might be expected from it. Secondly, the proposals must be approved by the Minister with the consent of the Treasury as being financially reasonable having regard to the circumstances of the land concerned and the requirements of proper layout redevelopment. On the subject of development plans the recommendation of the Manpower Committee reads, "In scrutinizing plans the Minister will not duplicate the work of the technical staffs of the local planning authorities . . . but will confine attention to the main features . . . " On the subject of "areas of comprehensive redevelopment" the committee did not suggest an economy in "the information at present required by the Ministry," and, under the heading of finance, "no special measures to ease the Ministry's control can usefully be taken . . . ," though the committee also stated that "in due course," the Ministry would review the regulations concerning Exchequer grants in respect of the acquisition and clearing of land in redevelopment areas "when adequate experience has been gained."

Perhaps local government with forms of possible new local taxation given up in prospect and its only source, *viz.*, rating, curtailed by Parliament's derating, may well think that through the amount of expenditure still to be found out of rates, the disciplinary control against extravagance is likely to be more effective in the council chamber than in the House of Commons. But, for good or ill, the requirements of regulation and circular (and the control is in practice additionally detailed in circulars) go beyond the financial into the "requirements of proper layout and redevelopment" and make the local government function almost a form of State delegation. What is given by the Act is taken away by the regulation.

Local government is not merely "big business," but it has its business side and the relationship between the central government and local authorities *inter se* are really aspects of one undertaking. Parliamentary supremacy could at least in theory centralize all the powers of local authorities and so end local government. This suggestion, of course, is wildly impracticable. Parliament would immediately have an impossibly accentuated problem of devolution. A little thought along this line, of, *e.g.*, a civil service administration with advisory non-elected councils, or, on public corporations, shows how superior the present arrangement is. Whether the powers of local authorities are considered as a limited surrender of Parliamentary supremacy (in favour of local authorities whether chartered or not exercising "their responsibilities in their own right"), or as a measure of devolution, is not really important. Whether constitutionally the powers of local authorities are at any time adequate or sufficient is a continuous question. Development through the Local Government Act, 1929; the Education Act, 1944; the National Health Service Act, 1946; and the Town and Country Planning Act, 1947, has reposed important powers in county borough councils and in county councils, leaving the functions of the county district councils to be determined by devolution or delegation according to local needs and resources. A most important exception is the function of redevelopment given (to county borough councils and) in administrative counties to the county district councils.

One of the inquiries which the Manpower Committee is to make into the "procedure for delegation" within the framework of existing law is only in one respect immediately a manpower problem (although whatever the activity of local government, perhaps, *e.g.*, in the interest of local patriotism, any extravagance in manpower is obviously suspect). Most things can be done in two ways. With locally elected councils the chosen instruments of devolution and delegation regard must be had to local government's distinguishing features—the independent existence at law of local authorities, the popularly elected council, the power to rate . . . A locally elected council is not necessary in a mere servant or agent denuded of responsibility. The local authorities involved in redeveloping their towns have at once a wide interest in the economic and social welfare of their inhabitants. In short they exercise a function as important as any, for the success of which a sufficient degree of real power seems essential above other considerations.

One advantage of delegation is that the delegating authority has the responsibility to delegate only where the local "set up" is adequate. In the case of redevelopment, however (in which delegation has no place), only the larger places will have the problem and thus the direct conferment of the function on the county district councils as well as the county borough councils appears likely to succeed, provided always that central control does not go too far, whether firstly in terms of manpower economy or secondly against the "own right" of local government. Taking the longer view, the first of those probably includes the second.

"EPHESUS."

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Danckwerts, J.)

WESTMINSTER CITY COUNCIL *v.* HASTE

May 9, 1950

Rates — Non-Payment — Company — Winding-up — Preferential debt —Receiver carrying on business—Duty to make provision out of money coming into his hands—Companies Act, 1929 (19 *and* 20 *Geo.* 5, *c.* 23), *s.* 78 (1); *s.* 264 (1) (*a*)—*Companies Act*, 1948 (11 *and* 12 *Geo.* 6, *c.* 38), *s.* 94 (1); *s.* 319 (1) (*a*) (i).

ACTION by a local authority against a receiver for damages for breach of duty in exhausting the assets of a company by making payments to the ordinary creditors and incurring debts in carrying on the business without paying or making provision for the payment of a sum due for rates.

At the end of 1939 a company owed the plaintiff council £68 8*s.* 9*d.* in respect of rates. On May 16, 1940, a receiver of the assets of the company was appointed by the debenture holders. On June 11, 1940, a winding-up petition was presented, and on June 24, 1940, a winding-up order was made against the company. On July 9, 1940, the council made a formal demand for the sum due for rates. The receiver continued to carry on the business of the company from the time he went into possession on his appointment by the debenture holders. At the end of the period from May 16, 1945, to November 15, 1945, the receipts exceeded the outgoings and the receiver had £91 in hand, but this sum diminished until, after May, 1947, there was a slight loss. The receiver finally replied to the council that he had no assets out of which to pay the sum due for rates. On November 5, 1948, the council issued a writ claiming damages, contending that the council's claim for rates was a preferential debt under the Companies Acts (*see* the Act of 1929, s. 78, s. 264, and the Act of 1948, s. 94 (1), s. 319 (1) (*a*) (i)), and that the receiver had committed a tort by paying away assets of the company to trading and other creditors without making provision for the council's preferential claim.

Held, the receiver was required to pay the preferential creditors out of any assets which came into his hands as receiver, and in not making this preferential payment for rates when he had a sum in his hands which was more than sufficient to enable him to do so, but continuing trading and thereby incurring subsequent liabilities and paying away money in the course of that trading, he was under a liability in tort to the council.

Judgment for the council.

Counsel: *J. A. Wolfe* for the council. *Aronson, K.C.*, and *T. K. Wigan* for the receiver.

Solicitors: *Allen & Son*; *Hamlins, Grammer & Hamlin.*

(Reported by R. D. H. Osborne, Barrister-at-Law.)

REVIEWS

Michael and Will on the Law Relating to Water. Ninth Edition. By H. R. McDowell and C. F. Chamberlin, London: Butterworth & Co. (Publishers) Ltd. Price £6 6*s.* net.

This ninth edition of the *Water* volume of what has long been the standard work, since it began life as *Michael and Will on Gas and Water*, was badly needed. The fifth volume of *Lumley* contains the Water Act, 1945, which substantially recast the previous law, while the cumulative supplements to *Lumley*, to *Halsbury*, and to *Halsbury's Statutes*, made it possible to discover the most recent law. It was, however, very desirable that the officers of local authorities and water companies, and the legal profession generally, should have available once more a treatise dealing specifically with the law of water supply, in coherent form, and this need is filled by the present, ninth, edition of this work. The Rural Water Supplies and Sewerage Act, 1944, and the Water Acts, 1945 and 1948, spring from the White Paper entitled "A National Water Policy," which was presented to Parliament in 1944. The substance of the White Paper will be found in the present volume (in the middle of the book) and is important to be studied, because of the light it throws both on the defects of the pre-war system of supply and the intentions of the legislature in the post-war statutes. Other legislation bearing upon water is fairly voluminous from 1945 onwards and, here again, it will be a great help to those concerned to have it collected in one cover, and shown in its relation to water supply. The Statutory Orders (Special Procedure) Act, 1945; the Acquisition of Land (Authorization Procedure) Act, 1946; the Town and Country Planning Act, 1947; the River Boards Act, 1948, and the Lands Tribunal Act, 1949, form a mass of legislative provisions, indirectly affecting the work of the water engineer and water supply authorities. There is also a substantial body of Statutory Rules and Orders and Statutory Instruments. All these will be found set out, so far as relevant, in their proper places in the book. Apart from these extraneous provisions, it has been necessary to deal with the Waterworks Clauses Acts, 1847 and 1863, which although in process of supersession are still widely applicable. The book, as revised by the learned editors of the new edition, falls into ten parts of which Part IV is the specific legislation applicable to the county of London and the area of the Metropolitan Water Board, of which both the learned authors are officers. Although this is in one sense local legislation, and a good deal of it is old and now becoming obsolete, there is good reason for including it, inasmuch as the metropolitan water area comprises so many local government districts beyond the county of London: many local authorities are, therefore, more concerned with metropolitan water law than with the general law. The setting out in this volume of the metropolitan Acts which, with their notes, cover some ninety pages, is (incidentally) an indication that here is a possible fruitful topic for a consolidation Act. Apart from the matters already mentioned there are separate parts of the book dealing with the safety of reservoirs, river pollution, and those provisions of the Companies Acts which are of importance to the water undertakings which have retained their company form. The annotation of the Acts, section by section, is more complete than is sometimes to be found in a textbook on a particular subject. We have, for example, been interested to find notes dealing with the formalities for execution of contracts; with the rights incidental to easements, and with actionable negligence, all of which may be useful for reference in other fields than that of the supply of water. In setting out the water provisions of the Public Health Act, 1936, those which are affected by the Water Act, 1945, or other later legislation, are duly distinguished, so that, here again, the work (in effect) can be used with *Lumley*, vol. I. In these days of rapid change it is impossible to say how long the law will remain unaltered. The political pressure for nationalization of water supplies is not so strong as, and of a different order from, the pressure for nationalizing other public utilities, and it may be that nothing much will come of it. It is, however, hardly to be expected that the law will remain as it is at present, partly contained in century old statutes and partly in those of the last decade. When the next edition appears, it may accordingly be possible to drop some of the old statutory provisions; if this happens, we should like to see some reference made to efforts towards standardization and simplification of the requirements for water fittings, a matter which affects the ordinary consumer even more directly than the law of water supply. A great deal of valuable work was done in this direction between the wars. We have tested the book at a number of points and, as an exhibition of the actual provisions of the statutes and of the policy which Parliament was pursuing in enacting them, we have not succeeded in finding anything omitted. Six guineas looks at first a stiffish price, but the book is packed with reliable information, skilfully arranged. This edition, like its predecessors, will take a respected place upon the bookshelves of every senior local government official, and might usefully be placed in every major public library.

For Them That Are Yet To Come. By J. Graham H. Horton-Smith. London: Obtainable from the Author, 26 Rivercourt Road, Ravenscourt Park, W.6. 1950. Price 7*s.* 9*d.* inclusive.

Mr. Horton-Smith is well known to our own readers, for contributions mainly on matters relating to the law of landlord and tenant. We have, however, printed occasional contributions indicating also another of his main interests, which is genealogy. The present pamphlet is a clue, expanded from contributions he has made to *Notes and Queries*, to the genealogical and antiquarian records published by him from the 1890's onwards. A number of these have appeared in the *Genealogical Quarterly*, and the reader is referred also to the two volumes of *Horton-Smith Manuscripts* accepted by the British Museum in 1947. In this pamphlet will be found notes of pedigrees recorded by the learned author, throughout a period of some fifty years, with cross-references between one family and another. The families range from the Grahams, in their various spellings, and other Scottish families, to the Lumleys and the connexion of these with the Smiths and Horton-Smiths, and their absence of connexion with the plaintiff in *Lumley* v. *Gye*, who was originally Benjamin Levy. There are Robsarts, including Amy Robsart, and an exposure of the common error of

which even Scott was guilty, of referring to her as Countess of Leicester, and subsidiary lists of a whole variety of families and antiquarian associations, from the founder of the Y.M.C.A. to the mortgage of Orkney and Shetland to the King of Scotland. We cannot suppose that the pamphlet at 7s. 6d. will have a wide popular appeal, but for those who are interested in the topics which appeal to its learned author it will prove a rich source of information.

The Corporation of London. London : Geoffrey Cumberlege. Oxford University Press. Price 15s. net.

This is an anonymous work, stated on the title page to have been printed by order of the Corporation of London, under the direction of a special committee. The aim is described as being to stimulate public interest in the past history of civic government in London, with its ceremonial and pageantry, and give a short account of the present activities of the corporation. An historical introduction takes the reader back before the Norman Conquest, pointing out particularly certain points of difference between the corporation of the City and those of other municipal bodies. Chapters upon detailed matters then proceed to describing the nature of, and procedure in, common hall, followed by wardmotes, the court of aldermen, and the court of common council. Having thus dealt with the administrative side of the City's constitution, the work passes on to justice and finance. Ample information will be found upon the duties of the various officers and the nature of the livery. Upon first reading, the work produces the effect of being perhaps rather too compressed for ready discovery of particular matters, and the index is amateurish, giving equal treatment to such entries as ice cream, the Irish Society, the city marshal, and the inspection of canal boats. We should regard the work as raw material for historical study, apt to be worked up by others, rather than as an historical or descriptive work of great importance in its own right. It certainly does, however, contain a great deal of information, and persons interested either in the City as an entity or in particular aspects of ancient or modern municipal government in England will find it useful as a book or reference.

PERSONALIA

APPOINTMENTS

Mr. Gilbert H. F. Mumford, solicitor and clerk to the justices for the borough of Gravesend, has been appointed clerk to the Luton borough justices. Mr. Sharpe, solicitor and chief assistant to the borough of Bromley, will succeed him at Gravesend. Mr. Mumford was the first whole-time clerk at Gravesend and will be the first whole-time clerk at Luton. He is the author of *A Guide to Juvenile Court Law*.

Mr. Clive Sarginson has been appointed deputy town clerk of the Royal Borough of New Windsor in place of Mr. J. G. Caunce, who has entered private practice with the firm of Messrs. Willmett & Co., of Windsor. Mr. Sarginson is thirty-five years of age and was admitted in 1949. He served in H.M. forces during the war, being released with the rank of captain. Prior to serving in the forces, he was senior clerk and committee clerk to the borough of Nelson ; on his release he was appointed chief clerk, and in May, 1949, he was appointed assistant solicitor.

Mr. G. K. Waddell, assistant solicitor to the Harrogate Corporation, has been appointed assistant solicitor to the city of Peterborough. Mr. Waddell was articled to the town clerk of Lancaster, and later became legal assistant at Lancaster. During the war he served in the Royal Air Force.

Miss Eveline Crossley, probation officer for the Lancashire No. 1 combined probation area, has been appointed to a similar position in the Lancashire No. 2 combined probation area. Miss Crossley has been a probation officer at Bristol and has served the three courts in the Lancashire No. 1 area for the past six years. She is hon. treasurer of the Lakes branch of the National Association of Probation Officers.

Mr. Thomas Sydney Burghart, a full-time probation officer for the city of Portsmouth, has been appointed a probation officer for the county of Hampshire, to act in the Alton-Whitehill-Aldershot areas. Mr. Burghart, who is thirty-six years of age, has been connected with the probation service since 1939. He served in the Royal Air Force during the war.

RESIGNATION

Alderman E. A. Bailey, a former mayor of Boston, Lincs., has resigned after twenty-nine years' service as a member of the borough council.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

DEPARTMENTAL PROSECUTIONS

Sir W. Smithers (Orpington) asked the Minister of National Insurance in the Commons whether her attention had been called to the fact that Mr. E. R. Guest, the West London magistrate, complained of the way in which her department conducted its cases, and dismissed them ; what steps was she taking to prevent further waste of public funds on such prosecutions ; and what disciplinary action did she propose to take against the officials concerned.

The Minister of National Insurance, Dr. Edith Summerskill, replied that she was making inquiries about that case and would write to Sir W. Smithers when she had completed them.

Sir Waldron : " Is it not a fact that these cases are evidence of the inevitable results of State trading ? Is the right hon. Lady aware that if officials in private industry behaved like this they would get the sack ? Will she take disciplinary action ?"

Dr. Summerskill ; " The hon. Gentleman has forgotten that I have changed my department. I do not deal in State trading."

LIMITATION OF ACTIONS

Lieut.-Colonel M. Lipton (Lambeth-Brixton) asked the Attorney-General what steps were being taken to give effect to the recommendations of the Report of the Committee on the Limitation of Actions.

The Attorney-General, Sir Hartley Shawcross, replied that careful consideration had been given to the recommendations of the Committee but he was unable to say when it would prove possible to introduce legislation.

Lieut.-Colonel Lipton : " Will the right hon. and learned Gentleman use his best endeavours to rescue these useful and, I think, non-controversial proposals by this Committee from unmerited oblivion ?"

The Attorney-General : " I would like to see the law relating to this matter tidied up, but the proposals are not entirely non-controversial."

MATRIMONIAL CAUSES ACT

Dr. Charles Hill (Luton) asked the Minister of Health whether he was aware that no relief was afforded by the Matrimonial Causes Act, 1937, to a person whose wife or husband, having been a certified patient in a mental hospital, after an interval subsequently became a voluntary patient and was incurably of unsound mind ; and whether he would introduce amending legislation so as to make available facilities for the release from the matrimonial yoke of a spouse incapable of enjoying normal matrimonial life through mental disability of the other spouse.

The Attorney-General, who replied, said that the Matrimonial Causes Act, 1937, enabled a petition for divorce to be presented on the ground that the respondent was incurably of unsound mind and had been continuously under care and treatment for at least five years immediately preceding the presentation of the petition. For that purpose, a person was deemed to be under care and treatment while he was detained in pursuance of an order made under the Lunacy Acts (or under the corresponding legislation in force in Scotland, Northern Ireland, the Isle of Man or the Channel Islands) or while he was receiving treatment as a voluntary patient, being treatment which followed without any interval the period of detention already mentioned. If any interval occurred between the ending of the period of detention and the subsequent voluntary treatment it would normally relate to a period during which the patient was not regarded as insane and it would not, he thought, be in the public interest to amend the law so as to permit a period of treatment as a voluntary patient to be taken into account in such circumstances.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, May 16

DIPLOMATIC PRIVILEGES (EXTENSION) BILL, read 3a

HOUSE OF COMMONS

Monday, May 15

DISTRIBUTION OF INDUSTRY BILL, read 3a

MERCHANT SHIPPING BILL, read 3a

Tuesday, May 16

FINANCE BILL, read 2a

STATUTE LAW REVISION BILL (LORDS), read 2a

Thursday, May 18

ROYAL PATRIOTIC FUND CORPORATION BILL, read 3a

STATUTE LAW REVISION BILL (LORDS), read 3a

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 35.

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT, 1920

REFUSAL OF SOUTH AFRICAN COURT TO REGISTER AN ORDER MADE IN ENGLAND

In the summer of 1944 a court of summary jurisdiction at Reading heard a complaint of the wife DL that her husband WL had been guilty of persistent cruelty to her. During the course of a lengthy hearing the husband alleged that the court had no jurisdiction to hear and determine the complaint on the ground that the marriage to DL was bigamous and that in consequence she was not a married woman to whom the court could grant relief. DL relied upon, *inter alia*, the certified copy of the entry relating to her marriage, but the husband was offered an adjournment in order to establish the first marriage, if he could. At the adjourned hearing on September 28, 1944, the husband WL was unable to tender any evidence, other than his own testimony, touching the first marriage, since it appeared that the first wife had returned to South Africa and the witnesses to that marriage could not be traced. The court was not disposed to believe the husband's evidence about a previous marriage and, if bigamy had been committed, held that DL had no knowledge of it, and a maintenance order was made in favour of DL.

Subsequently W.L. made an attempt to have the order revoked on the ground that no marriage subsisted between him and DL but the complaint was dismissed as *res judicata*. Thereafter WL frequently disappeared and much difficulty was experienced in enforcing the order. Eventually DL discovered that he had gone to South Africa and was living in Durban. In June, 1949, the Reading court, at her request, forwarded the order *via* the usual channels, to the magistrates' court in Durban for registration, together with a sworn statement of the arrears. In due course the order was registered at the magistrates' court, Durban, on or about October 4, 1949, WL not being present. He was, however, served on a day or two later with notice of the registration, whereupon he immediately applied to that court to set the notice of registration aside on the ground that his marriage to DL was bigamous and that in consequence the magistrate had no jurisdiction to register the English order.

It so happened that WL was then in a position to prove the second marriage bigamous, for not long after his arrival in South Africa the first wife had instituted divorce proceedings resulting in a provisional order of divorce on February 1, 1949, which order became final on May 1, 1949. However, the Durban magistrate adjourned the application to enable DL to take legal advice and be heard.

By s. 2 of the Union of South Africa Maintenance Orders Act, 1923 (No. 15 of 1923) :—" Whenever a maintenance order has . . . been made against any person by any court in a proclaimed country and a certified copy of the order has been transmitted . . . the Minister of Justice shall cause a copy of the order to be sent to the clerk of the magistrates' court in the Union for registration ; and on receipt thereof the order shall be registered in the prescribed manner and shall, from the date of such registration be of the same force and effect . . . as if it had been an order originally obtained in the court in which it is so registered, and that court shall have the power to enforce it accordingly."

By s. 7 of the said Act the provisions of the Magistrates' Courts Act (No. 32 of 1944) have been applied to orders under the Maintenance Orders Act, 1923.

By s. 36 of the Magistrates' Courts Act, 1944 :—" the court may, upon application of any person affected thereby, or, in cases falling under para. (c) *suo motu* :—(*a*) Rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties, (*b*) . . . (*c*) correct patent errors in any judgment in respect of which no appeal is pending, (*d*) rescind or vary any judgment in respect of which no appeal lies."

Affidavits having been filed on behalf of WL the matter came before the magistrates' court, Durban, for argument on January 12, 1950, when both parties were represented. Counsel for DL argued that the magistrate had no power to rescind the order of registration since it did not fall within the provision of s. 36 of the 1944 Act. He submitted that registration of the order did not imply an appearance by either party before the court, nor could it be said that the court had power to inquire into the validity of the order before registration. The relief sought by WL was in respect of the making of the original order and not in respect of its registration. He should seek his relief in England. Counsel also submitted that there was no evidence that the order in England had been made without jurisdiction and could, therefore, be said to be void *ab origine*.

Counsel for WL submitted that as the marriage was proved to be bigamous, the court had no power to make an order for the maintenance of a bigamous wife, and therefore to register an order in favour by such a wife made elsewhere. He further argued that the registration became a judgment within the meaning of s. 36 of the 1944 Act.

Counsel for DL replied that the provision for registration under the 1923 Act was peremptory and even if the court rescinded its own registration order, the original order for maintenance would still stand in England. He did not dispute that in fact the marriage was bigamous.

The magistrate held that :—

1. That the registration of the order had the effect of an original order in the magistrates' court, Durban.
2. That the order was void *ab origine* in as much as DL was not the legal wife of WL.
3. The registration of that order was accordingly set aside.

OBSERVATIONS

When a court of summary jurisdiction in England has made an order for maintenance pursuant to the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, and the order is subsequently sent to a dominion court for registration pursuant to s. 2 of the Maintenance Orders (Facilities for Enforcement) Act, 1920, the better opinion has been that the dominion court's duty is purely ministerial, and that it has no discretion to refuse to register an order which has been made by a court of competent jurisdiction in England. This, it may be argued, is the intention of the English Act and of the reciprocal legislation in the dominions and colonies. The somewhat unusual facts disclosed in this report show, however, that the power of the dominion court depends on the local law, which may give magistrates' courts abroad a wider jurisdiction and greater powers than are given to the corresponding courts in this country.

It is understood that DL could have appealed against this judgment, but owing to the expense and difficulty of prosecuting an appeal in South Africa she decided not to do so.

COMMENT

The writer is greatly indebted to Messrs. Sheppard and Fullbrook, solicitors, of Reading, who acted for the wife in this matter, for information in regard to this case, and to Mr. R. H. Langham, M.C., M.A., clerk to the justices, Reading, for information in regard to the case, and for the observations which are set out above, and to which the writer does not feel that he can usefully add. R.L.H.

PENALTIES

West Bromwich Quarter Sessions—April, 1950—breaking and entering with intent to commit a felony—five years' preventive detention. Defendant, a fifty-two year old labourer with thirty-five previous convictions committed over a period of twenty-three years, was seen to be in the kitchen of a private house and was followed by a neighbour who then reported the matter to the police.

Norwich—April, 1950—obtaining credit by fraud (two charges)—conditional discharge. Defendant, aged twenty-six of no fixed address, obtained £12 10*s.* from one hotel and £18 16*s.* from another by stating that he had just got married and desired to spend his honeymoon in Norwich. When asked to pay his account he stated he had lost his Post Office Savings Bank Book. Defendant asked for a similar offence involving £15 at a London hotel to be taken into consideration.

Norwich—April, 1950—stealing property value £200 from unattended motor cars (eleven charges)—six months' imprisonment. Defendant, aged twenty-four of no fixed address, committed the offences within a period of eight days. He had previous convictions.

Gloucester—April, 1950—making a false representation to obtain a sickness benefit—fined £5. To pay £5 5*s.* costs. Defendant, a woman of seventy-eight who had failed to appear at an earlier court, stated that the reason she had failed to appear was because she did not care much about appearing in courts.

West Bromwich Juvenile Court—April, 1950—sacrilege—fined £2. Defendant, a boy of thirteen, broke into a Methodist church with his ten year old brother and stole money from collection boxes. The day before he was due to appear before court on this charge he was caught stealing ginger beer from a lorry.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

WHAT THE POLICE FOUND

DEAR SIR,

Your correspondent at p. 137 *ante* takes a particularly jaundiced view of the police and their method of dealing with found property. Contrary to his view we have neither the time nor the inclination to make "criminals," nor to embarrass the innocent by unnecessary inquiries.

As you rightly point out, a search is made to list individual items. It may well be that a wallet comes into the possession of the police after it has been stolen and subsequently discarded minus part of the contents. When the owner claims the article we want to be in a position to say exactly what it contained when it came into our hands.

In the case quoted by your correspondent the trouble appears to centre round petrol coupons discovered in the wallet. Not knowing the exact details of the case I can only conclude that the usual action was taken by the police force dealing with the matter, that is to say, that the ration documents brought to the police were not returned to the owner direct but to the department issuing them. The reason for this procedure is evident. When A loses his petrol coupons he, not knowing if or when they will be found, may apply for replacements. The issuing department naturally do not want the documents returned to the loser if they have issued duplicates.

No doubt, when the officer of the Ministry of Fuel and Power received from the police the petrol coupons which purported to belong to the loser of the wallet but were recorded as having been issued to someone else, he became suspicious and asked for further inquiries to be made.

It is difficult to understand how the police can be criticized under such circumstances. There are a few people who always see a sinister motive behind an action taken by the police. On the one hand they demand, quite rightly, that offenders shall be treated fairly and not presumed guilty unless proved so by evidence before a court. Yet they condemn the police without evidence, without trial and on the merest presumption.

Most criticism arises out of ignorance or prejudice. I leave it at that.

Yours truly,
B. N. BEBBINGTON,
Chief Constable.

Chief Constable's Office,
Borough Police,
Cambridge.

The Editor,
Justice of the Peace and
Local Government Review.

WHAT THE POLICE FOUND

DEAR SIR,

With reference to your note at p. 137 *ante*, may I submit the following.

The primary purpose of tabulating the contents of articles found by the police or handed to the police by finders is to ensure the protection of the police or finder, if the owner claims that the property is not intact. It is a case of not only being right but making it appear to be right.

I doubt whether your correspondent would have been perturbed if the article had been other than petrol coupons. There are certain articles which when seen by a police officer would immediately cause him to consider whether they were connected with an offence against the law, and if so, it is his duty to satisfy himself by inquiry whether an offence is disclosed.

One would think that your correspondent would have had experience of offences against the law which had come to light as the result of a search of persons or property. For instance, it happens in many cases that when a motorist reports an accident he is required to take his insurance certificate and driving licence to a police station, which in some cases results in him being charged with driving an uninsured motor vehicle, and he is punished by a fine and loss of his driving licence. Whether a police officer agrees with a particular law or regulation matters not; he simply carries out his duty, which is to enforce the law.

Your correspondent would be surprised if he knew how many major crimes have been unearthed from an apparently simple and trivial beginning, but he can rest assured that when the police do check property which has been found, their primary and initial motive is to satisfy themselves as to the contents and to make a complete and accurate check to the satisfaction of the finder, and, we hope, in most cases, of the loser.

Yours faithfully,
A. E. EDWARDS,
Chief Constable.

Chief Constable's Office,
Middlesbrough.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MEANING OF SHOP

With reference to P.P. 7 at p. 161 some further clarification on the point mentioned may be derived from the Young Persons (Employment) Act, 1938. Section 3 (2) and s. 7 (*h*) make it quite clear that the legislators are aware that the provisions of the Shops Act, 1934, do not apply. They have, in fact, placed the inspection of these premises in the hands of the factory inspector. The same argument as published by you applies equally to a boot and shoe repairer where no other retail trade is carried on, etc. Clarification on all these points and many others is badly needed; and it is hoped that the Gowers Report when instituted will help to iron out the many difficulties.

Yours faithfully,
NORMAN TAYLOR,
Inspector. Shop Acts, 1912 to 1938. Young Persons (Employment) Act, 1938.

6, The Hale,
Harrow Road,
Wembley, Middlesex.

NEW COMMISSIONS

CITY OF COVENTRY

Mrs. Edna Bayliss, 27, Beanfield Avenue, Coventry.
Miss Winifred Merrick Barrow, M.A., 2, Manor Road, Coventry.
Ronald Alfred Blake, 51, Watercall Avenue, Coventry.
Frederick George Elliott, 85, Donnington, Avenue, Coventry.
Mrs. Alice Lilian Galpine, The Doctor's House, The Isolation Hospital, Whitley, Coventry.
Henry Norman Gregg, Ch.B., L.R.C.P., M.R.C.S., G.M., 48, Asthill Grove, Coventry.
James Larkin Jones, 15, Sheriff Avenue, Coventry.
Eric Cecil Keevil Kenderdine, M.B., Ch.B., M.R.C.S., L.R.C.P., Woodlands, 49, Earlsdon Avenue, Coventry.
Alec Kenney, 28, Hartington Crescent, Coventry.
Walter Benjamin John Lowe, 8, Central Avenue, Stoke Park, Coventry.
John Ernest Parbury, 2, Cannon Hill Road, Coventry.
William Henry Stokes, 57, Rochester Road, Coventry.
Harold Temple Suddens, 21, Warwick Avenue, Coventry.
Cyril Taylor, 39, Keresley Road, Coventry.
Mrs. Elsie Thompson, Pinley Community Centre, Coventry.

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Norman Little, Woodend, Higher Hurdsfield, Macclesfield.
Miss Susan May Lomas, Brookside, Upton, Macclesfield.
Norman Brocklehurst Maurice, Grantock, Upton, Macclesfield.
William Read Wadsworth, the Gables, Lime Grove, Macclesfield.
William Eric Whiston, Beech Rise, Beech Lane, Macclesfield.
Mrs. Margaret Alice Wilkinson, 17, Westminster Road, Macclesfield.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Common—*Regulation—Litter, etc.*

The council of a rural district wishes to take action to prevent the nuisance caused upon a common within their district by reason of char-a-banc parties during the summer months picnicking on the land and depositing or leaving litter, tins, broken bottles, and other rubbish. It appears that the council should make a scheme for the regulation and management of the common, with a view to the making of byelaws for the prevention of nuisances and the preservation of order on the common under s. 1 of the Commons Act, 1899, but it is required to know whether there is a simpler and more expeditious procedure to prevent the nuisance. A compulsory purchase order authorizing the purchase of the common would appear to be subject to special Parliamentary procedure, as there would be no land available to give in exchange, and in any case the cost and expense involved would be heavy. COMMONER.

Answer.

Apart from the complications attaching to purchase, we think a scheme is the proper course to take. It certainly is rather an old fashioned and heavy handed method, but the Ministry of Agriculture and Home Office (S.R. & O. 1935, No. 840; S.R. & O. 1946, No. 1757) will supply precedents and there is no real difficulty.

2.—Husband and Wife—*Maintenance order—Discharge by mistake, on summons to vary—Wife not present—Remedy.*

Is it possible for a matrimonial order made by justices to be withdrawn for consideration, assuming that it has not yet been drawn up and sealed? Have the justices power to do this, as the High Court has, *vide* 19 *Halsbury* 261, "until a judgment or order has been . . . drawn up there is inherent in every court the power to . . . withdraw the order so that the decision may be reconsidered." Further, can an order be regarded as a nullity if an important part of procedure is not complied with in a court of summary jurisdiction as apparently it can in the High Court, (*Craig* v. *Kanseen* [1943] 1 All E.R. 108).

The facts on which advice is sought are as follows: A wife, W, obtained a separation order from her husband, H, in 1942. H has always been a bad payer, and when brought before the court has said that the order ought never to have been made as his wife had gone off with another man. Some months ago he applied to have the order revoked on the ground of his wife's adultery, but having no witnesses, the application was dismissed. Recently, I as collecting officer, summoned H for arrears, and the husband again having said that his wife was living with another man, the court adjourned the collecting officer's summons to enable H to make another application to have the order revoked. H subsequently went to my office to take out this application; my assistant saw him, and he told her he wanted to vary the order. She asked him on what grounds, and he told her he could not afford to pay. The application was therefore entered to vary the order, on the grounds of insufficiency of income.

At the hearing the wife did not appear. Service of the summons was proved and the hearing proceeded in the wife's absence. H's solicitor proceeded with the application by calling witnesses to prove W's association with another man, at the time the order was originally made in 1942, and also subsequently in 1943. The court, on this evidence, discharged the order "on proof of fresh evidence." Most unfortunately the fact was overlooked, and was not observed until too late, that the application was only made to vary the order through insufficiency of income and consequently W was only summoned to answer that application, in which she chose not to appear, not on application to discharge the order on fresh evidence. The question is therefore whether the order to discharge the order was a nullity, through having been made without any proper application to the court, and in effect without the wife having been served with the summons; and whether the court had power, before the order was drawn up and served, to withdraw it.

An opinion would be very much appreciated with advice on the best course now to adopt.

SRIL.

Answer.

These questions of mistakes and their rectification are difficult to deal with, and there is little authority to act upon. We can, however, begin by saying that one well-established principle is that magistrates are creatures of statute and have almost no inherent powers. If this were only a case of an order drawn up incorrectly, the position would not be difficult, but here it is a question of an incorrect adjudication, and not of the form of a document. The justices are *functi officio*, and we do not think they can, at a later date, reopen the same matter or treat the earlier hearing as a nullity.

We have no doubt it is open to the wife to appeal to the High Court. The question is whether that is her only remedy. As nothing has been done upon the order of discharge, and the parties were not responsible for the mistake, it seems a pity if they must be put to the trouble of such proceedings, and we suggest, though not without some hesitation, that the wife should be given the opportunity of having a summons to revive the order, under s. 30 (3) of the Criminal Justice Administration Act, 1914. Alternatively, she might apply for a fresh order if she still has grounds for this. If she does not avail herself of this and does not appeal, the order of discharge stands. If the order is revived, we think the husband could be granted a fresh summons alleging adultery and asking for the order to be discharged.

The case of *Espin* v. *Espin* (1949) W.N. 404 should be consulted as to the principles involved.

3.—Husband and Wife—*Maintenance Orders (Facilities for Enforcement) Act, 1920—Provisional order made abroad—Form of summons to defendant in England.*

I have received from the Secretary of State documents specified in s. 4 (1) of this Act, to lead to the issue of a summons under s. 4 (2). I have been unable to find a specimen form of this summons, and shall therefore be much obliged if you could furnish same; the form of provisional order is printed in *Oke's Formulist*. SOM.

Answer.

The usual form of summons can easily be adapted, the recital being to the following effect. A provisional order having been made against you by the . . . court at . . . on . . . , a copy of which order is hereto annexed.

You are hereby summoned to appear at . . . on . . . to show cause why the said provisional order should not be confirmed in accordance with the provisions of the Maintenance Orders (Facilities for Enforcement Act), 1920.

4.—Landlord and Tenant—*Tribunal—Evidence—Administration of oath.*

The Furnished Houses (Rent Control) Act, 1946, requires a tribunal thereunder to give to each party an opportunity of being heard, or in his option of submitting representations in writing. Regulation 7 of the Furnished Houses (Rent Control) Regulations, 1946, S.R. & O. 1946, No. 781, gives a party who appears the right to do so in person or by counsel, solicitor, or other representative. Are statements made by the party, under examination by counsel or otherwise, or by a witness called on behalf of the party, "evidence" within the meaning of s. 16 of the Evidence Act, 1851, so that the tribunal can if so minded require the statements to be made on oath? AAA.

Answer

The section last mentioned in the query is widely drawn. Every court, judge, . . ., arbitrator, or other person having by law or by consent of parties authority to hear, receive, and examine evidence is empowered by the section to administer an oath. The section was inserted in the Act in consequence of *R.* v. *Hallatt* (1851) 15 J.P. 434, where it was held that an arbitrator had no power to administer an oath and therefore that, when he had done so, a false statement was not perjury. Notwithstanding the wide terms of the section, the practice of Parliament has been to give express power of taking evidence on oath where this was intended. Section 40 of the Union Assessment Committee Act, 1862, gave power to enforce the giving of evidence, expressly so called, before assessment committees, but it was never held that s. 16 of the Act of 1851 applied: *Ryde* categorically states that an assessment committee cannot administer an oath. Tribunals acting under the Act of 1946 and the extended powers given to them in 1949 have some analogy to assessment committees, and the Minister of Health advised them, on their first establishment, that they could not administer an oath. This seems to us, notwithstanding s. 16 of the Act of 1851, to be much the safer view.

5.—Local Government Act, 1933—*Constitution of committees—Co-opted members.*

As an experiment and by way of rehearsal for the Festival of Britain, as well as with the object of producing revenue, my council have decided to hold a carnival week in 1950, and for that purpose are setting up a committee consisting of the whole of the members of the council (fifteen) plus thirty-two co-opted members. The enterprise will be undertaken under the auspices of the council and all minutes of the committee will be subject to approval and adoption by the council.

Would you let me have your opinion as to whether I am right in supposing that s. 132 of the Local Government Act, 1948, overrides s. 85 (3) of the Act of 1933 in relation to the powers of appointment of a committee including co-opted members. A.E.H.

Answer.

We do not understand the suggestion that s. 132 of the Act of 1948 overrides s. 85 (3) of the Act of 1933. Under s. 132, as under any other power of acting for whatever purpose, the local authority must act by its normal machinery, unless the statute giving the power varies that machinery, as s. 132 does not.

6.—Nuisance—*Trees believed dangerous but not imminently so—Quia timet action.*

I have in front of my residence three very high beech trees. If one were to fall, *e.g.*, during a gale, my home would probably be completely demolished, with a consequent grave risk of loss of life. I should be obliged if you could inform me whether I can require the owner to lop the trees, or whether there is any other remedy available. I am informed there has been a recent case dealing with this matter, but I have been unable to find this. The trees do not interfere with the highway, which runs between them and my premises, neither does the condition of the trees, at the moment, appear to be dangerous. ADAN.

Answer.

The case you have in mind is perhaps *Caminer* v. *Northern and London Investment Trust* [1949] 1 All E.R. 874, which appeared also in *The Times* newspaper on April 12, 1949, where however the damage had actually occurred. This case does not, as decided by the Court of Appeal over-ruling Lord Goddard, help you. *The Times* states that leave was granted to go to the House of Lords, but, so far as we have seen, the case has not yet been heard there. The remedy for apprehended injury by a *quia timet* action seems ruled out, on the facts you state, by *White* v. *Mellin* (1895) 72 L.T. 334, where Lord Watson said that a plaintiff must "satisfy the court that damage will necessarily be occasioned to him in the future."

7.—Public Health Act, 1936—*Escape from fire—Shop premises.*

My council has caused an inspection to be made of various properties within the ambit of s. 60 of the Public Health Act, 1936, with a view to the provision of proper means of escape in case of fire. Some difference of opinion has arisen as to the interpretation of subs. (4) (*c*), and in particular the word "employed" contained therein. Whilst it is appreciated that this term is, in common parlance, used with reference to the relationship of master and servant, it is thought that in the present context a wider meaning should be assigned to the word, so as to include all persons working on the premises, whether as a servant of the owner or as owner/occupier. It is submitted that there is room for the contention that the section is ambiguous on this point, and that consequently regard must be had to the logical interpretation of the statute as opposed to the literal one. As the intention of the section is to prevent danger to human lives, it is contended that a construction of subs. (4) (*c*) which would exclude from control a shop over which the owner/occupier sleeps would be contrary to the spirit of legislation. Your opinion as to the meaning of the words "persons employed" in subs. (4) (*c*) would be appreciated. "AREV."

Answer.

The word "employed" is equivocal: it can mean "occupied." Thus the contention in the query is arguable, but it would introduce an illogical distinction in that a resident shopkeeper would be protected whereas a tenant of rooms over the shop would not be, if there was nobody residing who also worked in the shop. On the whole we prefer the opposite view, regarding this part of the section as aimed at safeguarding employees, which gives some sort of logic to the enactment. We have not found an authority, but *Lumley's* note suggests that he shares our opinion.

8.—Public Health Act, 1936—*Privy conversion—Incidence of cost.*

A is the owner of three houses all let on weekly tenancies, and the local authority serves notices on him requiring him to carry out certain repairs, which include the conversion of the existing system to a water closet system of sanitation, involving a heavy initial and immediate expenditure. Is there any authority under the Public Health or Housing Acts which provides for financial assistance from the local authority in carrying out this class of improvement? A.S.W.S.

Answer.

The answer depends on whether the "existing system" (which we gather is not a water-carriage system) is prejudicial to health or a nuisance. If it is, s. 44 of the Public Health Act, 1936, is appropriate and the cost falls on the owner. If the existing system is not prejudicial to health or a nuisance, s. 47 applies and the cost is shared. The query mentions the Housing Acts, but we assume that the council's notice is under the Public Health Act, 1936.

9.—Public Health Act, 1936, s. 269—*Site for movable dwellings—Refusal on amenity grounds.*

Notice has been received from a rural district council of refusal of an application for a licence to use land as a site for movable dwellings. The notice, as is customary, gives no reasons for the refusal. Appeal to the justices is pending. On inquiry being made as to the reasons for the refusal the rural district council state that the refusal was based on the ground that the proposal would be injurious to the amenities of the locality. Application for development permission under the Town and Country Planning Act, 1947, for the same purpose has been refused and an appeal to the Minister of Town and Country Planning is pending. The public health authority for s. 269 of the Public Health Act, 1936, is the same rural district council which has delegated powers from the planning authority under the Town and Country Planning Act, 1947.

It seems to us that:—

1. Sections 268 and 269 of the Public Health Act, 1936, are designed to work together (*see* note (*a*) on p. 537 of *Lumley*), and the rural district council is going outside its powers in administering s. 269 when it refuses a licence on the ground of injury to amenities of the locality, but that they should consider the Public Health Act only.

2. Injury to amenities of the locality is a matter for the planning authority, to be dealt with on an application for planning permission.

3. Unless the matter works in this way, confusion must result, since appeal on the one hand is to the justices and on the other hand to the Minister of Town and Country Planning.

May we have your opinion and can you quote authority? A.P.S.

Answer.

We discussed the relation of these enactments fully at 113 J.P.N. 233. At that date, and indeed when the present query reached us and we sent our answer by post, we agreed that on merits, as there indicated, it would be a good thing to keep amenity out of s. 269, but felt obliged to say that unfortunately Parliament had not done so. (Amenity, and town and country planning powers, existed in 1936, but the later Acts have made the position worse.) We considered that the council were within their powers in refusing under s. 269, but, on the appeal to justices, that the owner had a strong argument on merits. We said: "If the justices reverse the council's refusal, the council are no worse off because your client still has to get planning permission. If the justices uphold the council, *i.e.*, turn down your appeal, your client's right of appeal to the Minister will be valueless. *Ergo*, you argue, the justices should allow your client's appeal, thus leaving him and the council to fight out the issue of amenity, before the tribunal created by Parliament for that express purpose." Since we wrote thus, the Divisional Court, taking our view of the merits, has read into the section a limitation which we could not find there: *Pilling* v. *Abergele U.D.C.*, 114 J.P.N. 8.

10.—Public Health Act, 1936—*Rent Restrictions Acts—Wooden building on brick foundations.*

We act for A who several years ago bought from B a small country seaside bungalow which the latter had erected on land belonging to X. The bungalow was erected before the local authority had powers of control over such structures; hence no plans were approved, and B held the site of the bungalow from X on a yearly tenancy. The tenancy was taken over by A, who has also paid rates and schedule A. X has now sold the land to Y, who has given A notice to quit. The bungalow is constructed mainly of wood and asbestos but has foundations of brick and stone, and there is a brick fireplace and chimney. Y maintains that the area is now licensed under the Public Health Act, 1936, as a site for movable dwellings and that the bungalow, despite its fireplace and chimney, is a portable one. We wish to obtain for A some security of tenure as the bungalow represents an investment of several hundred pounds, and A would be involved in considerable expense and loss if obliged to dismantle it. We shall be glad to have your opinion on the following questions:—

(1) Is the bungalow a movable dwelling within the Public Health Act, 1936?

(2) Assuming, as we believe to be the case, that the rent represents at least two-thirds the rateable value of the bungalow and that the bungalow is used by A as a residence, is A entitled to plead the protection of the Rent Restrictions Acts? ASS.

Answer.

(1) What is a movable dwelling is a question of fact, but we should say this structure certainly is not, seeing that it has foundations of brick or stone and a brick fireplace and chimney. It is obviously not "portable," but s. 269 of the Public Health Act, 1936, does not speak of portable buildings. The building may not comply precisely with the model byelaw in that behalf in the model building byelaws (apparently these did not apply when it was put up, but, if building byelaws are now in force, see the proviso to s. 269 (8) (i) of the Act), but it seems precisely of a type for which those byelaws have expressly provided for many years.

(2) Yes.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

NATIONAL ASSOCIATION OF LOCAL GOVERNMENT OFFICERS

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor on the permanent staff of the Legal Department. The salary is £675 rising by annual increments of £25 to £750 a year and the successful candidate will commence at a point in that grade appropriate to his qualifications and experience. The successful candidate will be included in the Association's contributory superannuation scheme if he passes a medical examination. Experience of local government law and administration is desirable but not essential.

Applications, giving the names of two persons to whom reference may be made, must reach me by June 12, 1950.

J. H. WARREN,
General Secretary.

1, York Gate,
Regents Park, N.W.1.

SMETHWICK & WEST BROMWICH COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for appointment as a full-time male Probation Officer. Applicants must not be less than 23 or more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the salary paid will be according to the scale prescribed by those Rules.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials to be sent to the undersigned not later than June 10, 1950.

ANTHONY SHAKESPEARE,
Secretary to the Combined Probation Area.

Law Courts,
Smethwick.

BANSTEAD URBAN DISTRICT COUNCIL

Deputy Clerk

APPLICATIONS are invited for the appointment of Deputy Clerk of the Council at a salary in accordance with Grade X of the A.P.T. Division of the National Salary Scales, plus "London weighting" allowance. Applicants must have had good legal and local government experience. Age should not be less than twenty-eight.

Particulars and conditions relating to the appointment, together with Form of Application, may be obtained from the undersigned. Applications must be delivered not later than June 14, 1950.

Canvassing will disqualify.

F. H. WILTSHIRE,
Clerk of the Council.

The Council House,
Brighton Road,
Banstead, Surrey.
May 19, 1950.

COUNTY BOROUGH OF DEWSBURY

Town Clerk's Department

APPLICATIONS are invited for the appointment of Assistant Solicitor, at a salary within the scale £550 × £20—£610 × £25—£710. Commencing salary to be fixed according to experience.

Last day for receipt of application June 5, 1950.

Further particulars can be obtained from the undersigned.

A. NORMAN JAMES,
Town Clerk.

Town Hall,
Dewsbury.
May 19, 1950.

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